THE MUKHTAṢAR

of Imām Abū'l-Ḥusayn Aḥmad Ibn Muḥammad Ibn Aḥmad Ibn Ja'far Ibn Ḥamdān

AL-QUDŪRĪ

al-Baghdādī
(362 AH – 428 AH)

A Manual of Islamic Law According to the Ḥanafī School

Translated from the Arabic with Introduction and Notes by

Ṭāhir Maḥmood Kiānī

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FOREWORD

ENDORSEMENTS OF THE TRANSLATION

1. MUḤAMMAD IMDĀD ḤUSSAIN PĪRZĀDĀ

In the name of Allah, the All-Merciful, the Most-Merciful

Al-Mukhtaṣar, the jurisprudential treatise of Imam al-Qudūrī, has enjoyed far more popularity than any other text in the Ḥanafī school. It is the nucleus around which laws revolve, and the foundation upon which other texts, commentaries and summaries are based. For hundreds of years, *Mukhtaṣar al-Qudūrī* has been presented to the masses in many forms, such as lectures in Islamic institutions and study circles, as well as in publications. It covers thousands of issues, enveloping all aspects of life; from worship to politics, and from private life to the international scene. I am pleased with the manner in which Ṭāhir Maḥmood Kiānī has undertaken the task of providing an English translation of this masterpiece. As a former student and current lecturer at the institution of Jāmi'a al-Karam, this work of his has brought about a sense of appreciation and honour to all those associated with the institution. I recommend this English translation of *Mukhtaṣar al-Qudūrī* to everyone, especially to the students and teachers of Ḥanafī jurisprudence.

Muhammad Imdād Hussain Pīrzādā
Founder & Principal of Jāmi'a al-Karam,
Eaton Hall, Retford, U.K.

2. AL-ḤAJJ ABŪ JA'FAR AL-ḤANBALĪ

In the Name of Allah, the Most Merciful, the Most Compassionate Praise be to Allah and peace and blessings be upon the Chosen One, his wives, family and companions.

As for what comes next:

I was shown extracts of *Mukhtaṣar al-Qudūrī* by our brother Ṭāhir Kiānī. I looked through both extracts, those being the Transactions and also the Introduction. I have found both of them not only lucid and easy to understand but also well written.

After further reading, I have found that this work has the capacity to be the most authoritative book on Ḥanafī *fiqh* in English based upon the extracts that have been shown to me. It is my sincere prayer and hope in Allah that the author will be successful in completing and presenting this much needed work in the English language to give adherents to the Hanafī School an authoritative text to return to for rulings. And with Allah is every success.

Was-Salaam,
Brother in Islam,
Al-Ḥajj Abū Ja‘far al-Ḥanbalī

مقدمة

الشيخ محمد بن يحيى النينوي

بسم الله الرحمن الرحيم

الحمد لله الذي فقه في الدين من أراد به خيراً ، ووفقه للإخلاص في النية والعمل سراً وجهراً ، وسلك به طريق من لايعصي له أمرًا ، والصلاة والسلام على سيدنا محمد المبعوث للكائنات بشيرًا ، وداعياً الى الله بإذنه وسراجاً منيراً ، وعلى آله الأطهار وأصحابه الأخيار وسلم تسليماً كثيراً

أما بعد

فإن من أنعم النظر وأجاد التأمل في سير الأئمة الفقهاء من أئمة أهل السنة والجماعة رضي الله تعالى عنهم وأرضاهم، لا بد وأن يقف عند بحر الأمام الأعظم أبي حنيفة النعمان رحمه الله ورضي عنه الذي لا شاطئ له، وعلمه الذي ندر مثيله. ففقهه ديباج مرقوم في ظاهره، ولؤلؤ منظوم في عمقه وداخله، شهد له بذلك الأئمة، واتفقت على جلالته الأمة، فهو في هذا المضمار أبو عذريته، ومالك جملته، وصبا رياحه. وقد أشار الى ذلك إمامنا الشافعي رحمه الله تعالى ورضي عنه بقوله: " الناس في الفقه عيال على أبي حنيفة". فرضي الله تعالى عنهم أجمعين ورحمهم وأعلى درجتهم في عليين. وقد سار الأئمة على نهج الإمام الأعظم رحمه الله تعالى متبعين لكلماته وأقواله، شارحين لكتبه وآثاره، وهم في كل هذا مقتفين سنة النبي الأعظم صلى الله عليه وآله وسلم، على نهجه حريصين، ولورّاثه من أهل الذكر تابعين. وكان منهم الامام العلامة الفقيه القدوة أبي الحسن أحمد بن محمد القدوري الحنفي البغدادي رحمه الله تعالى. ولد سنة 362هـ، ولقب بالقدوري نسبة الى بيع القدور وهي جمع قدر. أخذ الفقه من شيخه محمد بن الجرجاني عن أبي بكر الراوي عن الحسن الكرخي عن أبي سعيد البردعي عن علي الدقاق عن موسى بن نصر الرازي عن الإمام أبي عبد الله محمد بن الحسن الشيباني عن الإمام أبي حنيفة النعمان رحمهم الله تعالى ورضي عنهم. انتهت الى الإمام القدوري رياسة السادة الأحناف في العراق، صنف المختصر والتجريد في مسائل الخلاف وغيرها من الكتب

النافعة، وكان من أصحاب الترجيح. ولما صنف المختصر حمله مع نفسه الى بيت الله الحرام وعلقه على أستار الكعبة، وسأل الله أن يبارك له فيه. فاستجيب له ووضع الله القبول لكتابه هذا بين الأمة، فتناقلته الأجيال واعتنت به شرحاً ودراسة وتدريساً وترجمة، لما جعل الله في ذلك من البركة والخير العميم. توفي الإمام القدوري في رجب عام 428هـ، ودفن ببغداد، رحمه الله تعالى وأعلى في الجنة مثواه.

وهذا المختصر الفخيم اشتهر بمختصر القدوري، وهو يتميز بشيئين:

1 – سوقه مسائل المذهب المشهورة على المعتمد، في ستين وثلاث مائة باب.

2 – احترازه من الكلمات المبهمة بحيث جاءت عبارات المتن سهلة بسيطة، حتى قال جمع من ساداتنا الحنفية رضي الله عنهم: «هو أجمل كتاب في أحسن إيجاز وإعجاز»، حكاه الحاج خليفة في كشف الظنون 2/1631 وقال: "هو متن متين معتبر متداول بين الأئمة والأعيان". وهو كذلك.

ومن بركة هذا المختصر أن هناك جملة من المتون الفقهية التي بنيت على أساس مختصر القدوري، منها كتاب «تحفة الفقهاء» للإمام العلاء السمرقندي ت 539هـ، وقد تميز بأنه يذكر الخلاف بين الإمام والصاحبين وزفر، ويذكر رأي مالك والشافعي، اضافة الى اعتناءه بذكر الأدلة النقلية والعقلية. ومنها أيضاً كتاب «بداية المبتدئ» للإمام المرغيناني وغيرهما.

وقد أرسل لي الأخ الفاضل الأريب والشيخ اللوذعي النجيب، الأستاذ الحبيب طاهر محمود كياني حفظه الله ورعاه، نموذجاً من خدمته لمختصر الإمام القدوري، فأمعنت النظر فيما أرسل لي من كتاب الشركة، فوجدته متقناً غاية الاتقان ببيان رائق وأسلوب فائق، يدلّ على نضوج في الفكر وتوقّد في القريحة واعتدال في السليقة فشكرت الله سبحانه وتعالى على توفيقه لجناب العلاّمة الزكي الألمعي الشيخ طاهر محمود كياني سلّمه الله تعالى. والشيء من معدنه لا يستغرب، فالشيخ طاهرهو من تلامذة العلامة الفهامة الفاضل الفقيه الورع المفسر العالم العامل شيخ الإسلام والمسلمين الشيخ محمد امداد حسين بيرزاده، زاده الله مدداً وزيادة، ومتّع الأمة بحياته.

وختاماً أسأل الله تعالى أن يتقبل هذا العمل خالصاً لوجهه الكريم، وأن يجعل فيه النفع العظيم، وأن يوفق أخانا الشيخ طاهر محمود كياني حفظه الله لما فيه صلاح الدنيا والدين، ودعوته سبحانه أن يسدّده ويرفعه إلى المقام العالي في العلم والعمل والدعوة، إنّه وليّ التسديد وهو حسبنا ونعم الوكيل والحمد لله ربّ العالمين.

قاله بلسانه ورقمه ببنانه الفقير الى رحمة ربه الغني محمد بن يحيى بن محمد الحسيني النينوي الشافعي غفر الله له ولوالديه وللمؤمنين في 25 من ذي القعدة لعام 1430 من هجرة الحبيب المصطفى صلى الله عليه وآله وسلم.

3. SHAYKH MUḤAMMAD IBN YAḤYĀ AN-NĪNOWĪ

In the name of Allah, the All-Merciful, the Most-Merciful

All praise is due to Allah Who causes those whom He wishes goodness to understand the *fiqh* of the *dīn* [of Islam] and endows him with sincerity in intention and in action, secretly and openly, and makes him travel the path of those who do not disobey Him in any affair; and peace and blessings be upon our Master Muḥammad who has been sent to all beings as a warner, calling to Allah by His leave, and as an illuminating lamp; and upon his pure family

and his noble companions – peace [upon them all] in abundance.

Whoever looks carefully and is good at reflection on the lives of the Imams of *fiqh,* of the Imams of the People of the Sunnah and the Community (*Ahl as-Sunnah wa'l-Jamā'ah*) – may Allah be pleased and satisfied with them, ought to pause by the boundless sea that is the Great Imam Abū Ḥanīfah an-Nu'mān, may Allah have mercy on him and be pleased with him, whose knowledge is rarely matched. His *fiqh* is externally a striped silk brocade and internally a well-ordered pearl in its depths. The Imams have testified to that and the Ummah are unanimously agreed on his magnificence. In this regard, he is the lord of his own spirituality (his own spiritual guide), the master of his own wholeness (his own master) and the sirocco of his own winds (his own academic reference). Our Imam ash-Shāfi'ī, may Allah have mercy on him and be pleased with him, has indicated that, saying: "In terms of *fiqh,* the people are dependents of Abū Ḥanīfah." May Allah be pleased with them all, have mercy on them all, and elevate their stations in the uppermost abodes of Paradise (*'Illiyyūn*). The imams adopted the manner of the Greatest Imam (Abū Ḥanīfah), may Allah have mercy on him, following his words and verdicts, commenting on his books and transmissions. They, in all this, are emulating the Sunnah of the Greatest Prophet ﷺ; they abide by his method, and they are adherents of those inheritors of his of the people *of dhikr.* Among them was the exemplary erudite scholar *of fiqh,* Imam Abū'l-Ḥusayn Aḥmad ibn Muḥammad al-Qudūrī al-Ḥanafī al-Baghdādī, may Allah have mercy on him. He was born in 362 AH, and is known by the title of al-Qudūrī due to the sale of pots (*qudūr*), which is a plural *of qidr* (pot). He acquired legal knowledge (*fiqh*) from his teacher Muḥammad ibn al-Jurjānī, who acquired it from Abū Bakr ar-Rāzī (al-Jaṣṣāṣ), who acquired it from Ḥasan al-Karkhī, who acquired it from Abū Sa'īd al-Barda'ī, who acquired it from 'Alī ad-Daqqāq, who acquired it from Mūsā ibn Naṣr ar-Rāzī, who acquired it from Imam Abū 'Abdullāh Muḥammad ibn al-Ḥasan ash-Shaybānī, who acquired it from Imam Abū Ḥanīfah, may Allah have mercy on them and be pleased with them. The leadership of the Ḥanafīs in Iraq came to rest with Imam al-Qudūrī.

Of the many beneficial works he authored there are the *Mukhtaṣar,* and the *Tajrīd* in matters of disputation, etc. He was of those who analyse and assess the relative merits of verdicts within a school of thought (*ṣāḥib*

attarjīḥ). When he authored the *Mukhtaṣar*, he took it with him to the House of Allah and suspended it from the cover of the Ka‘bah and beseeched Allah to place blessings therein for him, which he was granted, and Allah made his manual to be acknowledged by the Ummah. Generations transmitted it and preserved it by means of explanation, study, teaching and translation, for Allah had placed blessing and general benefit in it. Imam al-Qudūrī died in Rajab, 428 AH and was buried in Baghdād, may Allah have mercy on him and render his highest resting place in Paradise lofty for him.

This imposing manual, the *Mukhtaṣar*, is popularly known as the *Mukhtaṣar al-Qudūrī*, and is characterised by two things:

1. It confidently addresses popular issues within the school (*madhhab*) in three hundred and sixty chapters.

2. It abstains from using vague expressions in such a manner that it presents the wordings with simplicity and ease, so much so that numerous Ḥanafī masters, may Allah have mercy on them, have said: “It is the most beautiful manual with the finest form of concision and marvellousness.” This has been narrated by Ḥājjī Khalīfah in *Kashf aẓ-Ẓunūn* 2/1631, and he said: “It is a strong and authentic text that is employed by imams and notables.” He himself is of this opinion.

Among the blessings of this *Mukhtaṣar* there is that there is a class of legal texts that have been built upon the foundation of the *Mukhtaṣar al-Qudūrī*, which include the *Tuḥfat al-Fuqahā*, by Imam as-Samarqandi (d. 539 AH), which is distinguished by the manner in which he mentions the disagreements between the Imam (Abū Ḥanīfah), the *Ṣāḥibān* (Imam Abū Yūsuf and Imam Muḥammad) and (Imam) Zufar, and states the views of (Imam) Malik and (Imam) ash-Shāfi‘ī, may Allah have mercy on them, in addition to paying special attention to rational and transmitted evidences. Of them there is also the book *Bidāyat al-Mubtadī*, by Imam al-Marghīnānī, as well as others.

The learned and intellectual brother, the sagacious and distinguished shaykh, the beloved teacher, Ṭāhir Maḥmood Kiānī, may Allah protect and preserve him, sent me a sample of his service to the *Mukhtaṣar* of Imam al-Qudūrī. I studied what he sent me of ‘The Book of Partnership (*Kitāb ash-Sharikah*)’ closely, and I found it to be accurate to a high degree with very succinct elucidation and a style of superior quality, which indicates maturity

of thought, brilliance of talent and moderation of intuition. I thanked Allah, Glorified and Exalted is He, for His according success to the right honourable, erudite, upright and intellectual Shaykh Ṭāhir Maḥmood Kiānī, may Allah the Exalted safeguard him; nothing from His treasury is surprising.

Shaykh Ṭāhir (Maḥmood Kiānī) is one of the students of the erudite, intellectual, learned, legal expert, Allah-fearing, exegete (of the Noble Qur’ān) and practical scholar, Leader of Islam and the Muslims (*Shaykh al-Islām wa’l-Muslimīn*), Shaykh Muḥammad Imdād Ḥussain Pīrzāda, may Allah increase him in (His) assistance (to him) and in provisions, and may He let the Ummah derive benefit from his life.

In conclusion, I ask Allah to accept this work undertaken purely for His noble sake, that He renders it of immense benefit, and that He aids our brother Shaykh Ṭāhir Maḥmood Kiānī, may Allah protect him, for the welfare of the *dunyā* (world) and the *dīn* (religion), to call others to Him, Glorified is He, (and I ask Allah) to lead him on the right way and raise him to the lofty station in terms of knowledge, practice and invitation to the Truth (*da‘wah*); certainly, He is the Guide to hitting the mark, He alone suffices us and He is the Best Guardian; all praise is due to Allah, Lord of all the worlds.

Stated with his tongue and composed with his fingers, by the one in need of the mercy of his Lord Who is abundantly rich beyond need, Muḥammad ibn Yaḥyā ibn Muḥammad al-Ḥusaynī an-Nīnowī ash-Shāfi‘ī, may Allah forgive him, his parents and the believers. 25th Dhu’l-Qa‘dah, 1430 AH after the Migration of the Beloved Muṣṭafā, may Allah bless him and his family and grant him peace.

INTRODUCTION

FIQH

Meaning and Application

The term *fiqh* literally means ‘understanding’, ‘comprehension’ and ‘knowledge’, and technically refers to ‘knowledge of derivative *sharī‘ah* rulings along with the evidences for them with details both of the rulings and their evidences’,[1] composed and codified from four recognised sources:

1. Glorious Qur’ān,
2. Noble Sunnah,
3. Consensus (*ijmā‘*),
4. Analogy (*qiyās*).

Where explicit evidence is not found in the Noble Qur’ān, it is sought in the Sunnah of the Messenger Muḥammad ﷺ, and if not there then the agreement of Muslims in general, and particularly the knowledgeable, known as *ijmā‘*. If these three options do not bring a result, then the final recourse, known as *qiyās*, is the return to the Qur’ān or Sunnah for a similar example that can be applied to the new issue.

The question of how Consensus and Analogy are arrived at from the two primary sources is elucidated in this hadith of the Generous Prophet ﷺ:

The Messenger of Allah ﷺ dispatched Mu‘ādh ibn Jabal ؓ to Yemen and asked him how he would adjudicate to which he replied, “With the Book of Allah.”

The Messenger of Allah ﷺ asked, “What if you do not find [the ruling]?”

He replied, “With the Sunnah of the Messenger of Allah ﷺ.”

The Messenger of Allah ﷺ then asked, “What if you do not find [the ruling there either]?”

He replied: “I shall practise my reasoning.”

The Messenger of Allah ﷺpatted him on the chest saying: “All praise to

Allah ﷻ Who gave success to the messenger of the Messenger of Allah in achieving what pleases the Messenger of Allah."[2]

Here Sayyidunā Mu'ādh ibn Jabal ﷺ mentions the Qur'ān, Sunnah and his own reasoning as the means of adjudication, but he refrained from mentioning *ijmā'* (Consensus) because it was not required during the lifetime of the Prophet of Allah ﷺ.

In another narrative, Sayyidunā Abdullāh ibn Mas'ūd ﷺ says:

> "…as from today, whoever is faced with an issue, he should decide by what is in the Book of Allah and if an affair comes to him which is not in the Book of Allah, then he should decide by what His Prophet ﷺ decided, and if an affair comes to him that is not in the Book of Allah and His Prophet ﷺ did not decide on it, then he should decide by what the Righteous decided, and if an affair comes to him that is not in the Book of Allah and His Prophet ﷺ did not decide on it and the Righteous did not decide on it, then he should decide using his own reasoning…."[3]

In this narration deducing laws from the Qur'ān and Sunnah is mentioned explicitly, as well as *qiyās* and *ijmā'*, where the Righteous refers to the Ṣālihūn, the inheritors of, and actors upon, these two main sources. Following the consensus of those Ṣāliḥūn who are qualified to exercise *ijtihād*, is essential for Muslims due to *ijmā'* being the next most important source of decision-making which carries more weight than the single judgement of *qiyās*. If there is consensus on any issue in Islam, then *qiyās* is irrelevant. There are many hadith of the Messenger of Allah ﷺ that show that the consensus of the Ummah, i.e. as represented by the people of knowledge capable *of ijtihād*, cannot be wrong.[4]

The Generous Qur'ān tells us:

"*O you who believe! Obey Allah and obey the Messenger and those in command among you*." (4:59)[5]

The majority of the commentators of the Qur'ān and people of knowledge explain that in this verse obeying Allah ﷻ means obeying His commands and prohibitions in the Qur'ān, obeying the Messenger ﷺ means obeying him in what he commanded and forbade, and obeying 'those in command among you' means obeying the amirs, except if their command entails disobedience to Allah and His Messenger ﷺ. An interpretation of many of the people of knowledge including Imam Mālik is that it means obedience to the people of

knowledge. There is no difference of opinion that we are obliged to obey the unanimous rulings (*ijmā‘*) of the *‘ulamā’* and *fuqahā’* who are qualified to make *ijtihād*.[6]

Objectives

Fiqh deals with the actions of the legally responsible person (*mukallaf*), being graded as definite obligations (*farḍ*), incumbent (*wājib*), prophetic example (*sunnah*), liked (*mustaḥabb*), permissible (*mubāḥ*), slightly offensive (*makrūh tanzīhī*), severely offensive (*makrūh taḥrīmī*) and prohibited (*ḥarām*). *Fiqh* also deals with rules surrounding actions, such as pre-conditions (*sharṭ*), prevention (*māni‘*), concessions (*rukhṣah*), endeavour (*‘azīmah*), as well as valid (*ṣaḥīḥ*), corrupt (*fāsid*), void (*bāṭil*), discharged at its time (*adā’*), delayed (*qaḍā’*) and repetition (*i‘ādah*).

Fiqh defines the daily life of the *mukallaf* according to the command of Allah ﷻ, and so knowledge of His commands and prohibitions is necessary – at least in the fundamentals – and is an obligation on the *mukallaf*. The presence of the Beloved Messenger ﷺ obviated the need for legal rulings, but after his death, it required scrupulous knowledge of the Qur’ān and Sunnah which became increasingly difficult for the new generations of people embracing the *dīn* of Islam. There was no difficulty in Madinah as the first generations continued to observe the social pattern laid down by the Messenger ﷺ among his Companions and the succeeding two generations, but with the spread of Islam to new areas such as Iraq, Egypt, etc., new situations arose that needed clear knowledge of the original sources to guide the communities when novel incidents faced these emerging Muslim societies. The men of knowledge of the *dīn* realised the need to maintain its integrity and worked hard to preserve and gather the sayings and practice of the Messenger ﷺ wherever they could find it. Responsibility devolves with each succeeding generation to preserve our laws in word and spirit. This can only be done by continually striving to implement, maintain and purify the teaching that has come to us through impeccable sources.

Compilers

During the revelation of the Noble Qur’ān to the Beloved Messenger ﷺ, the Companions memorised it and to a lesser extent transcribed it. Each revelation contained instruction, teaching or information concerning issues

ranging from historical precedent, domestic matters, the Unity of God and relations with those outside of Islam, among many others. This memorisation was extensive, making the hearts and intellects of the Companions the storehouses of this knowledge. But as they died and the Ummah grew, new Muslims did not have the experience of the first generations and given the depth of the Glorious Qur'ān and the extent of the Noble Prophet's ﷺ actions and words, a need was perceived for gathering all the material together, and during the early second Hijrī century scholars emerged who began the arduous task of compiling these divine and human events and words into books and manuscripts. This complex and time-consuming task took these compilers travelling thousands of miles for weeks and months on end, to acquire sometimes only one hadith that would elaborate a particular legal position.

Of the many scholars and legal experts that arose, the work of four survived and remained the most prominent and influential:

- Imam Abū Ḥanīfah: he is an-Nu'mān ibn Thābit ibn Zuṭā ibn Marzūbān (80 AH/699 CE – 148 AH/765 CE)
- Imam Mālik: He is Mālik ibn Anas ibn Mālik ibn 'Amr al-Asba'ī (93 AH/711 CE – 179 AH/795 CE)
- Imam ash-Shāfi'ī: He is Abū Abdullāh Muḥammad ibn Idrīs ash-Shāfi'ī (150 AH/767 CE – 204 AH/820 CE)
- Imam AḥMAD ibn Ḥanbal: He is AḥMAD ibn Muḥammad ibn Ḥanbal Abū 'abdullāh ash-Shaybānī (164 AH/780 – 241 AH/855 CE), may Allah have mercy on them all.

All four Imams developed distinct methodologies of preserving the laws from the sources available to them. Their means of analysing evidence and its application varied, and sometimes led to differences between them. This produced four separate courses which became known as the *madhhabs* or schools, leading from, and returning to, the two great oceans of knowledge.

The general population being less qualified adhered to one school or the other, depending on political, regional or linguistic factors. The adoption of the Ḥanafī *madhhab* as the official methodology by some of the major Islamic dynasties led to its dominance until the end of the Caliphates.

The most famous of Imam Abū Ḥanīfah's pupils are Imam Abū Yūsuf, Imam Muḥammad ash-Shaybānī and Imam Zufar, may Allah have mercy on

them, and their opinions and legal verdicts form the substance of Ḥanafī jurisprudence.

In Ḥanafī and non-Ḥanafī texts, the term *Ṣāḥibān* refers to the mutual agreement of Imam Abū Yūsuf and Imam Muḥammad, as opposed to the opinion of Imam Abū Ḥanīfah. Similarly, the term *Ṭarafān* refers to the mutual agreement of Imam Abū Ḥanīfah and Imam Muḥammad, as opposed to the opinion of Imam Abū Yūsuf, and the term *Shaykhān* refers to the mutual agreement of Imam Abū Ḥanīfah and Imam Abū Yūsuf, as opposed to the opinion of Imam Muḥammad. The opinions of Imam Zufar are seldom quoted without the mention of his name individually. May Allah have mercy on all of them. This indicates the difference of opinion that has always existed among the scholars of Islam.

THE MUKHTAṢAR AL -QUDŪRĪ

About the Author

The author of *Mukhtaṣar al-Qudūrī,*[7] the Ḥanafī Jurist, Shaykh Abū'l-Ḥusayn AḥMAD ibn Muḥammad ibn AḥMAD ibn Ja'far ibn Hamdān al-Qudūrī al-Baghdādī, was born in Baghdād in 362 AH/973 CE and died on Sunday, 5th Rajab, 428 AH/1037 CE aged 66.[8] known as 'Abū'l-Ḥusayn', his first name was AḥMAD and his father's name was Muḥammad. He is generally referred to as al-Qudūrī, an ascription derived either from the selling of pots,[9] or to his hometown, called Qudūrah. Upon his death, he was buried in his own house, but was later buried next to the grave of the Ḥanafī jurist, Abū Bakr al-Khwārizmī.

His academic knowledge and *fiqh* trace back to the Prophet of Allah, Muḥammad ﷺ, through this line of teachers:

1. The Prophet Muḥammad ﷺ,
2. 'Abdullāh ibn Mas'ūd,
3. Alqamah ibn Qays,
4. Ibrāhīm an-Nakha'ī,
5. Ḥammād ibn Abū Sulaymān,
6. Abū Ḥanīfah an-Nu'mān ibn Thābit,
7. Muḥammad ibn al-Ḥasan ash-Shaybānī,
8. Mūsā ibn Naṣr ar-Rāzī,

9. ‘Alī ad-Daqqāq,
10. Abū Sa‘īd al-Barda‘ī,
11. Abū’l-Ḥasan ‘Ubaydullāh al-Karkhī,
12. Abū Bakr Aḥmad al-Jaṣṣāṣ,
13. Abū ‘Abdullāh Muḥammad ibn Yaḥyā ibn Mahdī al-Jurjānī.

Imam al-Qudūrī was in the fifth of seven grades of distinguished jurists in the Ḥanafī *madhhab*, which is known as the *aṣḥāb at-tarjīḥ,*[10] indicating his authority amongst legal scholars and jurists. His academic prominence and proficiency in legal matters established him as the supreme representative of Ḥanafī scholarship and law in Iraq.

In terms of hadith narration, he has been referred to as one who is truthful (*ṣadūq*) by many prominent scholars, including Abū’l-‘Abbās Shamsuddīn Aḥmad ibn Abū Bakr ibn Khallikān, al-Ḥāfz Abū’l-Fidā ‘Imāduddīn Ismā‘īl ibn ‘Umar ibn Kathīr, Ibn Tagharī al-Bardī, Abū’l-Farj ‘Abdurraḥmān ibn ‘Alī (a.k.a. Ibn al-Jawzī), Abū’l Ḥasanāt ‘Abdulḥayy ibn Muḥammad ‘Abdulḥalīm Lakhnawī and ‘Abdulkarīm ibn Muḥammad as-Sam‘ānī.

Abū Bakr al-Khaṭīb al-Baghdādī, the author of The History of Baghdad (*Tārīkh Baghdād*), cites the authority of Imam al-Qudūrī for prophetic narrations he learnt from him.

He authored:

- *At-Tajrīd* – in seven volumes, discussing the issues of contention between Ḥanafī and Shāfi‘ī scholars.
- *Kitāb at-Taqrīb* – compilation of issues with their evidences.
- *Sharḥ Mukhtaṣar al-Karkhī* – commentary on the compendium by Imam al-karkhī.
- *Sharḥ Adab al-Qāḍī* – commentary on the book on the Islamic legal system, by Imam Aḥmad Abū Bakr al-Khassāf.
- *Mukhtaṣar al-Qudūrī* – the compendium of *fiqh* based on Ḥanafī principles of jurisprudence and legal methodology, also known as *al-Kitāb,* which bears his name.

About the Book

The term *Mukhtaṣar* denotes anything of a summary or abridged nature and many of these précis works appeared in the early stages aimed at guiding the *mukallaf* in his daily routine without regard for citing the sources. Though

the *Mukhtaṣars* do not cover every aspect of daily life, they do reflect what the authors considered essential. For example, in *al-Jāmi‘ aṣ-Ṣaghīr,* Imam Muḥammad ash-Shaybānī (132 AH – 189 AH), may Allah have mercy on him, did not describe ablution (*wuḍū’*) or prayer (*ṣalāh*), but rather, focused on matters such as the violations of commands. These summaries extracted from the denser and more comprehensive works of Islamic law more common issues arising among the people in order to address them promptly and precisely.

In the Ḥanafī *madhhab,* the first to use the term *Mukhtaṣar* was Imam Aḥmad aṭ-Ṭaḥāwī (228 AH – 323 AH), for his book known as *Mukhtaṣar aṭ-Ṭaḥāwī* . Other *Mukhtaṣar* style works in the Ḥanafī School of legal interpretation include:

- *Al-Jāmi‘ aṣ-Ṣaghīr* (Imam Muḥammad ash-Shaybānī, d. 189 AH)
- *Al-Kāfī* (Ḥākim ash-Shahīd al-Marwazī, d. 334 AH)
- *Mukhtaṣar al-Karkhī* (Imam al-Karkhī, d. 340 AH)
- *Mukhtaṣar al-Jaṣṣāṣ* (Imam al-Jaṣṣāṣ, d. 370 AH)
- *Bidāyat al-Mubtadī* (Imam Burhānuddīn al-Marghīnānī, d. 593 AH)
- *Majma‘ al-Baḥrayn* (Imam as-Sā‘ātī, d. 694 AH)
- *Kanz ad-Daqā’iq* (Imam an-Nasafī, d. 710 AH)

All of the above are *Mukhtaṣars* although some are not titled as such.

Amongst the *Mukhtaṣars*, the one authored by al-Qudūrī is prominent and it is historically the most popular and important text in the entire literature of Ḥanafī *fiqh.* This is a tall claim to make, but a just one. All other later books of Ḥanafī *fiqh* are either based on this book, or revolve around it in one way or another.

There are three main types of relationship in Islamic law, which are those between:

1. The individual and the Creator,
2. The individual and the government,
3. The government and other states.

This book covers all three; personal affairs, public matters, worship, business transactions, warfare, judicial cases, politics, matrimony and legal

qualification, addressing approximately 12,500 issues.

The *Mukhtaṣar al-Qudūrī* has been taught for centuries in religious schools across the Muslim world as one of the foundational manuals of study in Ḥanafī dominated areas and continues to be a source of fundamental knowledge. It has remained a classic in *fiqh* in general, and in Ḥanafī *fiqh* in particular, for nearly a thousand years. It has been commented upon by ‘Abdulghanī al-Ghunaymī al-Maydānī (d. 1298 AH), in his book known as *al-Lubāb fī Sharḥ al-Kitāb,* by Abū Bakr ibn ‘Alī al-Ḥaddādī (d. 1397 AH), in *al-Jawharat an-Nayrah,* as well as Burhānuddīn al-Farghānī al-Marghīnānī, in *al-Hidāyah.*

Imam al-Qudūrī, it is reported, took this book with him to the Ka‘bah and attached it to its cloth hanging, beseeching Allah to bless it. His prayer, the narration says, was accepted.

This book does not provide evidence for the verdicts contained in it, as with most *Mukhtaṣars,* as those proofs can be found in more detailed works and commentaries. The raison d’être of the *Mukhtaṣar* is to provide a basic manual of belief and behaviour with a dichotomous stating of the dos and don’ts to enable the general populace to grasp the essentials of the *dīn* in a simple form that is easy to remember.

Although the *Mukhtaṣar* was designed for its readers to extract relevant material, it can become complicated when seemingly conflicting phrases or vague directives are encountered and the need for a guide to explain these anomalies is still required.

Over the centuries few books could compete or even co-exist with the *Mukhtaṣar* in success and dominance but in modern times the introduction of more up-to-date authorship in Ḥanafī *fiqh,* being relatively easier to read and providing legal references has caused the *Mukhtaṣar* to be overshadowed to some extent and these works have undermined its supremacy. Sadly it is not surprising to find among modern-day ‘scholars’ those who have never come across the *Mukhtaṣar al-Qudūrī.*

All is not lost however, as in the Indo-Pakistan subcontinent it is the most revered text after the Saḥīḥayn of al-Bukhārī and Muslim. Madrasahs continue to teach it at foundational level, followed by the more detailed *al-Hidāyah* and *Kanz ad-Daqā’iq,* etc. The continued dominance of the *Mukhtaṣar* in Ḥanafī-populated areas has contributed not only to its survival,

but also its promulgation around the world where Ḥanafīs migrated to, such as South Africa, the USA and the UK. Madrasahs established by the Indian and Pakistani migrant communities provide religious and Islamic legal information to expatriates as well as locals, and today (2010), there are many institutions based upon the Ḥanafī method of jurisprudence in non-Muslim countries. They all teach Islamic law based upon the *Mukhtaṣar al-Qudūrī,* be it directly from the *Mukhtaṣar* or from texts authored later. As far as dedicated Islamic schools, like Dār al-ʻUlūm Muḥammadiyyah Ghawthiyyah, in Bhera, Pakistan, or Jāmiʻa al-Karam, in Retford, Nottinghamshire, UK, are concerned, the *Mukhtaṣar al-Qudūrī,* is taught as a core subject at foundation level.

The Translation

A number of versions of the *text of the Mukhtaṣar al-Qudūrī are* available today with only minor additions, omissions, textual displacement, and variance in grammatical structure and gender. I have based my text and translation on the version that is published by Qadīmī Kutub Khānah, Karachi, Pakistan, due to its popularity. I have not confined myself to that version absolutely, but have diverged from some words and phrases in the text, such as grammatical gender issues (where I opted in favour of, or distinct from, the Arabic text). I have borrowed text from other versions of the *Mukhtaṣar* that I thought more apt. I inserted my own subheadings where I considered appropriate in order to make the book more usable by modern readers. As far as research and prudence have guided me, I have tried to provide an accurate interpretation of the text, which is not necessarily textually precise according to the original *Mukhtaṣar,* as utmost precision is impossible – as is evident from the disparity of the various existing versions. Where ambiguities, complexities and intricacies lay in the translation of the *Mukhtaṣar,* I strove to maintain as pure a translation from the Arabic text as possible. I felt the necessity for further explanation in order to clarify points to the reader, so I added footnotes according to my understanding. The extra-textual content, which refers to implied meanings and not what is written in the original, is authentic as far as my understanding of the fundamentals of *fiqh* is concerned, and the reader should not discard any version of the *Mukhtaṣar* as inauthentic because of this, but accept all versions as true in their meanings.

The text of the *Mukhtaṣar* is not written in a fluent paraphrased style, but is staggered from one *ḥukm* (legal command) to another. Frequently, and quite noticeably, Imam al-Qudūrī will switch from a ‘command to do’ to a ‘command to refrain from doing’, and then return to the former immediately or at a later stage in the chapter. In a modern context, this may seem a little odd and a little confusing to some, but the nature of the *Mukhtaṣar* reflects the demands of those times as well as the manner in which the author produced his content. We have to respect this and accept it as far as maintenance of the original remains a priority. While translating it into English, I found it impossible to paraphrase in order to render a flowing piece as I consider this is only possible if one is willing to alter the sequence of Imam al-Qudūrī’s authorship which I was not, as I believe Imam al-Qudūrī’s unstructured content should remain as it is, unless it be written as a fresh *fiqh* manual based on the *Mukhtaṣar*.

There is no such thing as ‘the perfect translation’ as nothing can be rendered from one language to another exactly. All translations are interpretations reflecting the intention of the original work and are heavily influenced by the understanding of the interpreter. My own case is the same. My rendition aims to provide the understanding of Imam al-Qudūrī’s *Mukhtaṣar* according to what he intended by it, but it may also reflect my own understanding, either intentionally or otherwise. This is the main reason why I have striven to maintain purity in translation rather than follow a contemporary pattern – in order to present the work of the author and not mine.

As far as I have attempted to interpret the knowledge of divine wisdom into the English language, as transmitted to us by Imam al-Qudūrī, may Allah have mercy on him, this translation is not absolute, and inconsistencies are inevitable and it would please me if readers would point out any errors of whatever nature. If my rendition is flawed and contains mistakes, they are entirely mine, and no-one is to blame but myself, but if I have translated with accuracy and precision, then praise belongs to Allah ﷻ, Who is Complete and Perfect in every way; Who grants perfection; Who is sheer perfection.

I do not believe myself qualified to undertake such a crucial and sensitive task as translating the *Mukhtaṣar al-Qudūrī*. I did so at the insistence of some

of my students of *fiqh* who encouraged me. Throughout the task, I seldom forgot my spiritual guide, Commentator of the Noble Qur'ān, Religious Thinker of the Twentieth Century and Luminary of the Ummah, Justice Shaykh Abū'l-Ḥasanāt Muḥammad Karam Shāh, may Allah have mercy on him, who took up the task of teaching others to teach, and transmitting divine wisdom to generations after him. This prophetic practice now continues with his noble son, Shaykh Muḥammad Amīn al-Ḥasanāt al-Qurashī, whose service to Islam and the Muslims of Pakistan can only be rewarded by Allah ﷻ. I am greatly inspired by my teacher and mentor, Shaykh Muḥammad Imdād Ḥussain Pīrzāda, principal of Jāmi'a al-Karam, UK, whose relentless efforts in upholding the truth and disseminating the fragrance of Islam stand prominent in the history of the UK. I thank all my teachers, especially Mawlānā Abū'l-In'ām Muḥammad 'Abdulbārī Chishtī, whose love for the Beloved knows no bounds, in taking me by the hand and leading me on the Straight Path at an early age. I consider myself indebted to Professor 'Imrān Aḥsan Khān Nyāzee, translator of *al-Hidāyah* and *Bidāyat al-Mujtahid*, etc. Who has been a figure of inspiration to me ever since I studied my first subject under him in the Faculty of Shari'ah and Law at the International Islamic University, Islamabad, Pakistan.

My gratitude would be incomplete if I do not extend it to those responsible in assisting this project, namely, Dr. Abia Afsar-Siddiqui, who helped in the publication and distribution of this work, and Ḥājj 'Abdaṣṣamad Clarke, who edited this publication and supported me with his invaluable suggestions.

I thank my wife who tolerated my endless hours spent inside books and at the computer and for her encouragement towards its completion; may Allah ﷻ bless her. May He ﷻ bless my brothers – Sājid, Anṣar and Aẓhar – with the true wisdom and observance of Islam. May He ﷻ bestow upon my children – Zayn, Qudsia and Mahdia – true understanding and adherence to Islamic beliefs and teachings, and cause them not to stray from the Straight Path. Finally, I beseech Allah ﷻ to bless my late father, Ḥājī Muḥammad Tāj 'Alī Kiānī (d. 19th April, 1995 CE/ 20th Dhu'l-Qa'dah, 1415 AH), who led me to school and to the *masjid* at an early age, which proved pivotal in my present life. Sadly, my beloved and saintly mother, whose prayers in my favour proved more effective than my own endeavours, passed away just before the

publication of this book, in the luminous month of the Prophet's ﷺ birth, on 18th Rabī' al-Awwal, 1431 AH/4th March, 2010 CE, may Allah have mercy on her, having attended many a *Mawlid* gathering in her last few days. May Allah ﷻ bless them both with forgiveness of all major and minor sins and the best of abodes in the *ākhirah.*

وَقُل رَّبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيراً

"My Lord! bestow on them Your mercy just as they cherished me in childhood." (17:24)

I dedicate this translation to them both; may Allah ﷻ accept it from me on their behalf. Āmīn.

We thank Allah for the fact that this translation was completed almost 1000 years to the day after the death of Imam al-Qudūrī, may Allah have mercy on him, on 5th Rajab, 428 AH. The translation was completed in Rajab, 1428 AH (July 2007).

Finally, for his ﷺ favours to humanity in particular, and to the entire creation in general, I express profound gratitude and invoke endless salutations and blessings upon the Final Messenger of Allah, Muḥammad al-Muṣṭafā ﷺ, for ever and ever.

Ṭāhir Maḥmood Kiāni

كتاب الطهارة

ṬAHĀRAH – PURIFICATION

قال الله تعالى :

﴿يَا أَيُّهَا الَّذِينَ آمَنُواْ إِذَا قُمْتُمْ إِلَى الصَّلاةِ فاغْسِلُواْ وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُواْ بِرُؤُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَينِ﴾

Allah, exalted is He, said:

"You who have īmān! when you get up to do ṣalāh, wash your faces and your hands [and your arms] to the elbows, and wipe over your heads, and [wash] your feet to the ankles."

(Al-Mā'idah 5:6)

WUḌŪ' – MINOR RITUAL PURIFICATION

ففرض الطهارة : غسل الأعضاء الثلاثة ومسح الرأس والمرفقان والكعبان تدخلان في فرض الغسل عند علمائنا الثلاثة خلافا لزفر رحمهم الله تعالى والمفروض في مسح الرأس مقدار الناصية و هو ربع الرأس لما روى المغيرة بن شعبة أن النبي صلى الله عليه وسلم أتى سباطة قوم فبال وتوضأ ومسح على الناصية وخفيه

The Obligations (*Farā'iḍ*) of *Wuḍū'*

Hence, the obligations of Purification are washing the three limbs,[1] and wiping (*masḥ*) the head.

The elbows and the ankles are comprised in the obligation of washing, according to our three *‘ulamā’*,[2] contrary to [the opinion] of Zufar, may Allah have mercy upon them.

The prescribed obligation in wiping the head is the extent of the forelock [and that is a quarter of the head] according to what al-Mughīrah ibn Shu‘bah reported, that the Prophet ﷺ arrived at the camp of a tribe and he passed water. He then performed *wuḍū’* and wiped over the forelock and his *khuffs*[3] (Muslim, an-Nasā’ī, Aḥmad, Abū Dāwūd and others).

وسنن الطهارة : غسل اليدين ثلاثا قبل إدخالهما الإناء إذا استيقظ
المتوضئ من نومه وتسمية الله تعالى في ابتداء الوضوء، والسواك
والمضمضة والاستنشاق ومسح الأذنين وتخليل اللحية والأصابع
وتكرار الغسل إلى الثلاث

The Sunnahs of Purification [sought in *Wuḍū’*]

1. Washing both hands thrice before entering them into the pot [of water] when the person performing *wuḍū’* wakes from sleep,
2. Mentioning the name of Allah ﷻ at the commencement of *wuḍū’*,
3. Using the toothstick,
4. Rinsing the mouth (*maḍmaḍah*),
5. Rinsing the nose (*istinshāq*),
6. Wiping both ears,
7. Combing the beard [with wet fingers],
8. Combing the fingers [of each hand with wet fingers of the opposite hand],
9. Repetition of the washing up to three times.

ويستحب للمتوضئ أن ينوي الطهارة ويستوعب رأسه بالمسح
ويرتب الوضوء فيبدأ بما بدأ الله تعالى بذكره وبالميامن والتوالي
ومسح الرقبة

Matters that are Recommended (*Mustaḥabbāt*) in

Wuḍū’

It is recommended for the person making *wuḍū’* that:

1. He intends Purification,
2. He covers [the entire] head with wiping,
3. He performs *wuḍū’* in order and commences with what Allah ﷻ mentions first,
4. [He commences] with the right [limbs first],
5. [He does the acts] in succession, and
6. He wipes the [nape of the] neck.

والمعاني الناقضة للوضوء : كل ما خرج من السبيلين والدم
والقيح والصديد إذا خرج من البدن فتجاوز إلى موضع يلحقه
حكم التطهير والقيء إذا كان ملأ الفم والنوم مضطجعا أو متكئا
أو مستندا إلى شيء لو أزيل لسقط عنه والغلبة على العقل بالإغماء
والجنون والقهقهة في كل صلاة ذات ركوع وسجود

That which Nullifies *Wuḍū’*

1. All that exits from the two passages,[4]
2. Blood, pus and serum – [such that] when they exit from the body they flow to a place that is subject to the rule of Purification,
3. Vomit, when it is a mouthful,[5]
4. Sleep, when the person is lying down, reclining, or leaning on something such that if it was removed he would fall over because of it,
5. The intellect being overcome by fainting or insanity, and
6. Laughter in every prayer that consists of bowing (*rukū‘*) and prostration (*sujūd).*

GHUSL – MAJOR RITUAL PURIFICATION

وفرض الغسل : المضمضة والاستنشاق وغسل سائر البدن

The Obligations of *Ghusl*

1. Rinsing the mouth,
2. Rinsing the nose, and
3. Washing the entire body.

وسنة الغسل: أن يبدأ المغتسل بغسل يديه وفرجه ويزيل النجاسة
إن كانت على بدنه ثم يتوضأ وضوءه للصلاة إلا رجليه ثم يفيض
الماء على رأسه وعلى سائر بدنه ثلاثا ثم يتنحى عن ذلك المكان
فيغتسل رجليه، وليس على المرأة أن تنقض ضفائرها في الغسل إذا
بلغ الماء أصول الشعر

The Sunnahs of *Ghusl*

The sunnahs of *ghusl* are that:

1. The person performing the *ghusl* commences by washing both his hands, and
2. His genitalia,
3. He removes the physical impurity (*najāsah*) if there is any upon his body,
4. Then he performs *wuḍū’* as he would perform *wuḍū’* for the prayer, except [the washing of] his feet,
5. He pours water over his head and [over] his entire body, thrice,
6. He moves away from that place [where he performs the *ghusl*] and washes his feet,
7. It is not [incumbent] on women to undo their plaits in *ghusl* if the water [easily] reaches the roots of the hair.

والمعاني الموجبة للغسل: إنزال المني على وجه الدفق والشهوة من
الرجل والمرأة والتقاء الختانين من غير إنزال والحيض والنفاس

The Factors which make *Ghusl* Obligatory

1. The ejaculatory discharge of spermatic fluid with passion by the man and the woman,

2. The meeting of both the external genitals [in sexual intercourse] [even] without ejaculation,
3. Menstruation (*ḥayḍ*), and
4. Postnatal bleeding (*nifās*).

وسنّ رسول الله صلى الله عليه وسلم الغسل للجمعة والعيدين
والإحرام وعرفة، وليس في المذي والودي غسل وفيهما الوضوء

When *Ghusl* is Sunnah

The Messenger of Allah ﷺ set *ghusl* as a sunnah for:

1. The Friday prayer,
2. The two *'Īds,*
3. *Iḥrām* (entering upon *ḥajj* or *'umrah*), and
4. [Staying at] *'Arafah.*

There is no *ghusl* [obligatory] in [the cases of] *madhy* (pre-seminal or pre-ejaculatory fluid) and *wadī* (post-urinal fluid), but *wuḍū'* is [required] for them.

والطهارة من الأحداث جائزة بماء السماء والأودية والعيون
والآبار وماء البحار

Water

Purification from *ḥadath* (ritual impurity) is valid with water from:

1. The sky,[6]
2. River valleys,[7]
3. Springs,
4. Wells, and
5. Seawater.

ولا تجوزالطهارة بماء اعتصر من الشجر والثمر ولا بماء غلب
عليه غيره فأخرجه عن طبع الماء كالأشربة والخل والمرق وماء
الباقلاء وماء الورد وماء الزردج

Purification is not permitted with water that has been squeezed out from trees (i.e. sap) or fruits[8] (e.g. fruit juice etc.), nor with water in which something alien is dominant and which has changed it from the natural state of water, like beverages, vinegar, broth, legume soup, rosewater and carrot juice.

وتجوز الطهارة بماء خالطه شيء طاهر فغير أحد أوصافه كماء المد والماء الذي يختلط به الأشنان والصابون والزعفران

Purification is permitted with water in which something pure is mixed and [which] has changed [only] one of its properties, like floodwater and water in which saltwort, soap and saffron are mixed.

وكل ماء دائم إذا وقعت فيه نجاسة لم يجز الوضوء به قليلا كان أو كثيرا لأن النبي صلى الله عليه وسلم أمر بحفظ الماء من النجاسة فقال ﴿لا يبولن أحدكم في الماء الدائم ولا يغتسلن فيه من الجنابة﴾

When physical impurity falls into any [type of] still water, *wuḍū'* is not permitted with it, be [that water] less or more [in quantity], because the Prophet ﷺ has instructed [us] to protect water from impurity, for he said:

"None of you should ever urinate in standing water, and neither should he bathe in it for [the removal of] *janābah* (major ritual impurity)."

(Al-Bukhārī, Ibn Mājah, Abū Dāwūd)

وقال عليه الصلاة والسلام : ﴿إذا استيقظ أحدكم من منامه فلا يغمسن يده في الإناء حتى يغسلها ثلاثا فإنه لا يدري أين باتت يده﴾

He ﷺ [also] said:

"Whenever any of you wakes from his sleep, he must not dip his hand into the pot [of water] until he has washed it[9] three times, for he does not know where his hand spent the night."

(Muslim, Abū Dāwūd, an-Nasā’ī, Ibn Mājah, Aḥmad, ad-Dāraquṭnī)

وأما الماء الجاري إذا وقعت فيه نجاسة جاز الوضوء منه إذا لم
ير لها أثر لا تستقر مع جريان الماء

With regards to running water, when physical impurity falls into it, [the performance of] *wuḍū’* is permitted with it, [provided] any effect of it is not noticeable, because [physical impurity] does not settle with the flowing of water.

والغدير العظيم الذي لا يتحرك أحد طرفيه بتحريك الطرف
الآخر إذا وقعت في أحد جانبيه نجاسة جاز الوضوء من الجانب
الآخر لأن الظاهر أن النجاسة لا تصل إليه

When physical impurity falls into either of the two sides of a large pond, in which one of the two sides does not move when one causes motion on the other side, then *wuḍū’* is permitted at the other side, because it is evident that the physical impurity has not reached it.

وموت ما ليس له نفس سائلة في الماء لا يفسد الماء كالبق والذباب
والزنابير والعقارب وموت ما يعيش في الماء لا يفسد الماء كالسمك
والضفدع والسرطان

The death in water of that which does not have blood flowing in it, like bugs, flies, wasps and scorpions, does not spoil[10] the water nor does the death in water of that which lives in water, like fish, frogs and crabs, spoil the water.

Used Water

والماء المستعمل لا يجوز استعماله في طهارة الأحداث، والماء المستعمل
: كل ماء أزيل به حدث أو استعمل في البدن على وجه القربة

The use of previously used water is not permitted for Purification from ritual impurities.

Previously used water is all water with which a ritual impurity has been removed, or that has been used on the body for the purpose of [seeking] nearness [to Allah].

On Tanning

وكل إهاب دبغ فقد طهر جازت الصلاة فيه والوضوء منه إلا جلد الخنزير والآدمي

Every hide becomes pure when it is tanned; prayer is permitted on it, and [the performance of] *Wuḍū'* is permitted with it, except [with] the hides of swine and human beings.

وشعر الميتة وعظمها طاهر

The hair and bones of the carcass are pure.

On Wells

وإذا وقعت في البئر نجاسة نزحت وكان نزح ما فيها من الماء طهارة لها، فإن ماتت فيها فارة أو عصفورة أو صعوة أو سوادنية أو سام أبرص نزح منها ما بين عشرين دلوا إلى ثلاثين بحسب كبر الدلو وصغرها

When a physical impurity falls into a well, it is taken out, and purification [of the well is achieved by] draining whatever water is in it.

If a mouse, sparrow, wagtail, king crow or gecko dies in [the well], between twenty to thirty buckets are emptied out from it, depending on the largeness or smallness of the bucket.[11]

وإن ماتت فيها حمامة أو دجاجة أو سنور نزح منها ما بين أربعين دلوا إلى خمسين، وإن مات فيها كلب أو شاة أو آدمي نزح جميع ما فيها من الماء

If a pigeon, chicken or cat dies in it, between forty to fifty buckets are emptied out from it.

If a dog, goat or human being dies in it, all of the water that is in [the well] is drained.

و إن انتفخ الحيوان فيها أو تفسخ نزح جميع ما فيها صغر الحيوان أو كبر

If the animal has become bloated in it, or has putrefied, everything in [the well] is drained, [irrespective of whether] the animal is small or large.

وعدد الدلاء يعتبر بالدلو الوسط المستعمل للآبار في البلدان فإن نزح منها بدلو عظيم قدر ما يسع من الدلاء الوسط احتسب به

The number of buckets is reckoned according to the medium-sized bucket used for wells in the lands. If [the water is] emptied out with a bucket of large volume which is more capacious than the medium-sized bucket, it is calculated according to that.

و إن كان البئر معينا لا ينزح و وجب نزح ما فيها أخرجوا مقدار ما فيها من الماء، وعن محمد بن الحسن رحمه الله تعالى أنه قال : ينزح منها مائتا دلو إلى ثلاثمائة

If the well is spring-fed, and is not drainable, and it is obligatory to drain whatever is in it, they take out the equivalent of whatever water is in it. It has been reported by Muḥammad ibn al-Ḥasan, may Allah have mercy on him, that he said, “Between two hundred to three hundred buckets are emptied out of it.”

و إذا وجد في البئر فارة ميتة أو غيرها ولا يدرون متى وقعت ولم تنتفخ ولم تتفسخ أعادوا صلاة يوم وليلة إذا كانوا توضئوا منها وغسلوا كل شيء أصابه ماءها

If a dead mouse or something else is found in the well, and they do not know when it fell in, and it has not become bloated nor has it putrefied, then they are to repeat the prayers of a day and a night if they had performed *Wuḍū’* from it, and they are to wash everything that its water had come in contact with.

وإن انتفخت أو تفسخت أعادوا صلاة ثلاثة أيام ولياليها في قول أبي حنيفة رحمه الله تعالى وقال أبو يوسف ومحمد رحمهما الله تعالى : ليس عليهم إعادة شيء حتى يتحققوا متى وقعت

If it had become bloated or had putrefied, then they are to repeat the prayers of three days and nights, according to a saying of Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf and Muḥammad,[12] may Allah have mercy on them, said that they do not have to repeat them until they ascertain when it fell in.

Leftover Water

وسؤر الآدمي وما يؤكل لحمه طاهر، وسؤر الكلب والخنزير وسباع البهائم نجس، وسؤر الهرة والدجاجة المخلاة وسباع الطيور وما يسكن في البيوت مثل الحية والفارة مكروه

Water leftover (*su’r*) by a human being and by [an animal] the meat of which is [legally] eaten,[13] are both pure.

Water leftover by dogs, pigs and predatory animals is impure (*najis*).

Water leftover by cats, stray chickens, birds of prey and of those creatures which inhabit houses, for example snakes and mice, is [all] disapproved (*makrūh*).

وسؤر الحمار والبغل مشكوك فإن لم يجد الإنسان غيره توضأ به وتيمم و بأيهما بدأ جاز

Water leftover by donkeys and mules is doubtful. Therefore, if any person

does not find anything other than this [type of water], he performs *wuḍū'* with it and [also] performs *tayammum* (dry ablution), and it is valid for him to commence with either of the two.[14]

باب التيمم

TAYAMMUM – DRY ABLUTION

Stipulations for the Validity of *Tayammum*

ومن لم يجد الماء وهو مسافر أو خارج المصر و بينه وبين المصر
نحو الميل أو أكثر، أو كان يجد الماء إلا أنه مريض فخاف إن
استعمل الماء اشتد مرضه أو خاف الجنب إن اغتسل بالماء يقتله
البرد أو يمرضه فإنه يتيمم بالصعيد

1. Someone who does not find water while travelling, or
2. While outside the city, and there is approximately a mile or more between him and water, or
3. Someone who does find water but is ill and is afraid that, if he uses the water, his illness will be aggravated, or
4. Someone who is *junub* (major ritually impure in need of *ghusl*) who fears that if he bathes with water, the cold will kill him or make him ill, then:

He performs *tayammum* with clean earth (*ṣa'īd*). (Al-Mā'idah 5:6)

The Method of *Tayammum*

والتيمم ضربتان : يمسح بإحداهما وجهه وبالأخرى يديه إلى
المرفقين والتيمم في الجنابة والحدث سواء

Tayammum is [performed by] two strokes [on the *ṣa'īd]:*

1. With one of which one wipes the face, and
2. With the other [he wipes] his two hands [and arms] up to the elbows.

Tayammum is the same in [the cases of] *janābah* and *ḥadath*.[15]

ويجوز التيمم عند أبي حنيفة و محمد رحمهما الله تعالى بكل ما
كان من جنس الأرض كالتراب والرمل والحجر والجص والنورة
والكحل والزرنيخ، وقال أبو يوسف رحمه الله تعالى : لا يجوز إلا
بالتراب والرمل خاصة

According to Abū Ḥanīfah and Muḥammad,[16] may Allah have mercy on them, *tayammum* is valid with everything which is of the genus of earth, like soil, sand, stones, gypsum, lime, kohl and arsenic.

Abū Yūsuf, may Allah have mercy on him, said, "It is only valid with soil or sand in particular."

والنية فرض في التيمم و مستحبة في الوضوء

The intention is an obligation (*farḍ*) in *tayammum,* and recommended for *wuḍū'*.

That which Nullifies *Tayammum*

وينقض التيمم كل شيء ينقض الوضوء، وينقضه أيضا رؤية
الماء إذا قدر على استعماله، ولا يجوز التيمم إلا بصعيد طاهر

Everything that nullifies *wuḍū'* nullifies *tayammum.*[17]

Sighting water also nullifies it, when one is able to use it.[18]

Tayammum is only valid with pure clean earth.

The Search for Water

ويستحب لمن لا يجد الماء وهو يرجو أن يجده في آخر الوقت
أن يؤخر الصلاة إلى آخر الوقت فإن وجد الماء توضأ وصلى وإلا
تيمم، ويصلي بتيممه ما شاء من الفرائض والنوافل

Someone who does not find water but does hope to find it during the last time [of the prayer] is recommended to delay the prayer up until the end of its

time. Then, if he finds water, he performs *wuḍū’* and prays, otherwise he performs *tayammum* [and prays].

Whilst in *tayammum,* one performs whatever obligatory and supererogatory prayers one wants.

ويجوز التيمم للصحيح المقيم إذا حضرت جنازة والولي غيره فخاف إن اشتغل بالطهارة أن تفوته صلاة الجنازة فله أن يتيمم ويصلي وكذلك من حضر العيد فخاف إن اشتغل بالطهارة أن يفوته العيد

Tayammum is valid for someone in good health who is resident, [in the case] when a funeral is present and the *walī* (heir) is someone other than himself, and he fears that he will miss the funeral prayer if he becomes occupied with purification [with water i.e. *wuḍū’* or *ghusl],* then he performs *tayammum* and prays. It is similar for someone who is present at *‘Īd* prayer and fears that he will miss the *‘Īd* [prayer] if he becomes occupied with purification [with water].

و إن خاف من شهد الجمعة إن اشتغل بالطهارة أن تفوته الجمعة توضأ فإن أدرك الجمعة صلاها و إلا صلى الظهر أربعا وكذلك إذا ضاق الوقت فخشي إن توضأ فاته الوقت لم يتيمم ولكنه يتوضأ ويصلي فائتة

However, if someone is present at the *Jumu‘ah* and fears that if he occupies himself with purification [with water], he will miss the *Jumu‘ah,* [nevertheless] he performs *wuḍū’;* then if he catches the *Jumu‘ah*, he prays it, but otherwise he prays *ẓuhr* as four *[rak‘ahs]*. Likewise, if the time becomes tight and he fears that he will miss the time [of that specific prayer] if he performs *wuḍū’,* [then] he does not perform *tayammum* but performs *wuḍū’* and prays his missed prayer.

والمسافر إذا نسي الماء في رحله فتيمم وصلى ثم ذكر الماء في
الوقت لم يعد صلاته عند أبي حنيفة ومحمد رحمهما الله تعالى،
وقال أبو يوسف رحمه الله تعالى: يعيد

If a traveller forgets [that he had] water during his journey and performs *tayammum* and prays, and then remembers the water still within the time [of that prayer], he does not repeat his prayer [with *wuḍū’],* according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them. Abū Yūsuf, may Allah have mercy on him, said that he repeats [the prayer].

وليس على المتيمم إذا لم يغلب على ظنه أن بقربه ماء أن يطلب الماء
و إن غلب على ظنه أن هناك ماء لم يجز له أن يتيمم حتى يطلبه

It is not incumbent on someone who is performing *tayammum* [as a traveller] to search for water if he is not inclined to believe that there is water nearby, but if he is inclined to believe that there is water [nearby] then he is not permitted to perform *tayammum* until he has searched for it.

و إن كان مع رفيقه ماء طلبه منه قبل أن يتيمم فإن منعه منه تيمم
وصلى

If his companion has some water with him, one asks him for it before performing *tayammum;* then if he refuses it, one performs *tayammum* and prays.

باب المسح على الخفين

MASḤ – WIPING OVER *KHUFFS*

Its Ruling

المسح على الخفين جائز بالسنة من كل حدث موجب للوضوء، إذا لبس الخفين على طهارة ثم أحدث، فإن كان مقيما مسح يوما وليلة و إن كان مسافرا مسح ثلاثة أيام ولياليها

Wiping over *khuffs* is valid, by the sunnah, from every ritual impurity that necessitates *wuḍū'*, when one dons *khuffs* while [ritually] pure, and thereafter becomes ritually impure. If one is resident, he wipes [over his *khuffs*] for [a maximum of] a day and a night,[19] and if he is travelling, then he wipes [over his *khuffs*] for [a maximum of] three days and nights.

وابتداؤها عقيب الحدث

Commencement [of wiping] follows the occurrence of ritual impurity.

Method of Wiping

والمسح على الخفين على ظاهرهما خطوطا بالأصابع يبتدأ من الأصابع إلى الساق، وفرض ذلك مقدار ثلاث أصابع من أصابع اليد

Wiping over the *khuffs* is made upon their outer [part], in lines [drawn] with fingers. One begins from the toes towards the shin. The obligation[20] in that [wiping] is the extent of three fingers from the fingers of the hand.

ولا يجوز المسح على خف فيه خرق كثير يتبين منه قدر ثلاث

أصابع الرجل و إن كان أقل من ذلك جاز

Wiping is not valid over a *khuff in* which there is a tear through which the extent of three toes are exposed, but if it is less than that, then it is valid.

ولا يجوز المسح على الخفين لمن وجب عليه الغسل

Wiping over *khuffs* is not permitted for someone for whom *ghusl* is

obligatory.

That which Nullifies Wiping

وينقض المسح ما ينقض الوضوء، وينقضه أيضا نزع الخف
ومضي المدة

Whatever nullifies *wuḍū'* nullifies wiping. The removal of the *khuff* also nullifies it, and so does the expiry of the period [of wiping].

Issues Pertaining to the Duration of Wiping

فإذا مضت المدة نزع خفيه وغسل رجليه وصلى وليس عليه إعادة
بقية الوضوء، ومن ابتدأ المسح وهو مقيم فسافر قبل تمام يوم وليلة
مسح تمام ثلاثة أيام ولياليها ومن ابتدأ المسح وهو مسافر ثم أقام
فإن كان مسح يوما وليلة أو أكثر لزمه نزع خفيه و إن كان أقل
منه تمم مسح يوم وليلة، ومن لبس الجرموق فوق الخف مسح عليه

When the period [of wiping] elapses, he removes both of his *khuffs*, washes both of his feet and [then he is permitted to] pray. The repetition of the rest of the *wuḍū'* is not incumbent on him.

Whoever begins wiping [over *khuffs*] while resident, then travels before completion of one day and one night, performs the wiping for the complete three days and nights.[21]

Whoever begins wiping [over *khuffs*] while travelling, then takes up residence:

1. If he has performed wiping for one day and one night or more, the removal of his *khuffs* is incumbent on him,
2. But if the wiping had been done for less than [a day and a night], then he may complete the wiping for a day and a night.

Whoever wears an overshoe (*jarmūq*) over the *khuff* [may] wipe over it.

That over which Wiping is not Valid

ولا يجوز المسح على الجوربين إلا أن يكونا مجلدين أو منعلين،
وقالا رحمهما الله تعالى: يجوز إذا كانا ثخينين لا يشفان، ولا يجوز
المسح على العمامة والقلنسوة والبرقع والقفازين، ويجوز على
الجبائر و إن شدها على غير وضوء فإن سقطت من غير برء لم
يبطل المسح و إن سقطت عن برء بطل

Wiping over socks is not valid, unless they are made of leather or they are soled. The two of them,[22] may Allah have mercy on them, said that it is valid [to wipe over socks] when they are thick and do not absorb water.

It is not valid to wipe over a turban, a cap, a veil or gloves.

It is permitted [to wipe] over splints,[23] even though they were fastened without [prior] *wuḍū'*. If they fall off without [the wound] healing, the wiping does not become void, but if they fall off after healing, [the wiping] becomes void.

باب الحيض

HAYD – MENSES

The Duration of Menstruation

أقل الحيض ثلاثة أيام ولياليها، وما نقض من ذلك فليس بحيض
وهو استحاضة، وأكثره عشرة أيام وما زاد على ذلك فهو استحاضة

The minimum [duration] of menstruation (*ḥayḍ*) is three days and nights,[24] so whatever is less than that is not menses, but chronic menstrual bleeding (*istiḥāḍah*).

Its maximum [duration] is ten days, so whatever exceeds that is [also] *istiḥāḍah.*

Colour

وما تراه المرأة من الحمرة والصفرة والكدرة في أيام الحيض فهو
حيض حتى ترى البياض خالصا

During the days of menstruation, whatever the woman sees of redness, yellowness and darkness [of discharge], is menses. [The menstruation continues] until she sees proper whiteness.

On its Legal Ruling

والحيض يسقط عن الحائض الصلاة ويحرم عليها الصوم وتقضي
الصوم ولا تضي الصلاة

Menstruation absolves the menstruating woman of the obligation to pray and it makes fasting *ḥarām* for her. She must make up (*qaḍā’*) the fast but does not have to make up the [missed] prayer.

ولا تدخل المسجد ولا تطوف بالبيت ولا يأتيها زوجها، ولا يجوز
لحائض ولا جنب قراءة القرآن، ولا يجوز لمحدث مس المصحف
إلا أن يأخذه بغلافه

She does not enter the mosque nor does she perform *ṭawāf* of the House [of Allah] (Ka‘bah). Her husband does not approach her [for sexual intercourse]. The recitation of the Qur’ān is not permitted for the menstruating woman nor for the *junub.* Touching the *muṣḥaf* (Qur’ān) is not permitted for someone who is in the state of minor ritual impurity requiring *wuḍū’ (muḥdith*), unless he holds it by its wrapper.

فإذا انقطع دم الحيض لأقل من عشرة أيام لم يجز وطيها حتى
تغتسل أو يمضي عليها وقت صلاة كاملة و إن انقطع دمها لعشرة أيام
جاز وطيها قبل الغسل، والطهر إذا تخلل بين الدمين في مدة الحيض
فهو كالدم الجاري، وأقل الطهر خمسة عشر يوما ولا غاية لأكثره

When the menstruation ceases in less than ten days, sexual intercourse is

not permitted with her until she takes a bath, or when the time of a complete prayer has passed by her. But if the bleeding ceases in ten days, sexual intercourse is permitted with her before [she does] the *ghusl.*

When [a period of] purity (*ṭuhr*) intervenes between two [separate] bleeding [periods] within the period of menstruation, then it is like continuous bleeding.[25]

The minimum [period of] purity is fifteen days, and there is no limit for its maximum.

Istiḥāḍah – Chronic Menstrual Bleeding

ودم الإستحاضة: هو ما تراه المرأة أقل من ثلاثة أيام أو أكثر من عشرة أيام

The bleeding of *istiḥāḍah* is what the woman sees:

1. [For] less than three days, or
2. For more than ten days.

On its Legal Ruling

فحكمه حكم الرعاف: لا يمنع الصلاة ولا الصوم ولا الوطى، وإذا زاد الدم على العشرة وللمرأة عادة معروفة ردت إلى أيام عادتها وما زاد على ذلك فهو استحاضة وإن ابتدأت مع البلوغ مستحاضة فحيضها عشرة أيام من كل شهر والباقي استحاضة

The ruling of [*istiḥāḍah*] is [the same as] the ruling of nosebleed; it does not prevent prayer, or fasting or sexual intercourse.

When the bleeding exceeds ten [days] and the woman has a known cycle [of menstruation and purity], she refers to the days of her cycle.[26] Whatever exceeds that [cycle] is *istiḥāḍah.*

If [a minor] commenced her puberty in the state of *istiḥāḍah,* her menses are ten days of each month and the remainder is *istiḥāḍah.*

والمستحاضة ومن به سلس البول والرعاف الدائم والجرح
الذي لا يرقا يتوضأون لوقت كل صلاة ويصلون بذلك الوضوء
في الوقت ما شاءوا من الفرائض والنوافل فإذا خرج الوقت بطل
وضوءهم وكان عليهم استئناف الوضوء لصلاة أخرى

The woman experiencing *istiḥāḍah*, someone who suffers from urinary incontinence, a continuous nosebleed or a wound that does not cease [bleeding or discharge of other matter] all perform *wuḍū’* for the time of every prayer and pray with that *wuḍū’*, at that time, whatever obligatory and supererogatory [prayers] they wish, and when the time elapses, their *wuḍū’* becomes void, and the renewal of the *wuḍū’* for the next prayer is incumbent on them.

Nifās – Postnatal Bleeding

والنفاس : هو الدم الخارج عقيب الولادة والدم الذي تراه الحامل
وما تراه المرأة في حال ولادتها قبل خروج الولد استحاضة

Postnatal bleeding is the blood that emerges following childbirth. The blood which the pregnant woman sees, and what a woman sees during her delivery, before the emergence of the child, is *istiḥāḍah.*

وأقل النفاس لا حد له وأكثره أربعون يوما وما زاد على ذلك فهو
استحاضة

There is no definition of the minimum [period] of postnatal bleeding, but its maximum is forty days. Whatever exceeds that is *istiḥāḍah.*

وإذا تجاوز الدم على الأربعين وقد كانت هذه المرأة ولدت قبل
ذلك ولها عادة في النفاس ردت إلى أيام عادتها وإن لم تكن لها
عادة فنفاسها أربعون يوما

When the bleeding extends beyond forty [days], and this [particular]

woman has given birth before and has a [regular] cycle in postnatal bleeding, she is to refer to the days of her [regular] cycle. If she does not have a [regular] cycle, then her postnatal bleeding is forty days.[27]

ومن ولدت ولدين في بطن واحد، فنفاسها ما خرج من الدم عقيب الولد الأول عند أبي حنيفة و أبي يوسف رحمهما الله تعالى

وقال محمد وزفر رحمهما الله تعالى : من الولد الثاني

Whoever gives birth to twins in one pregnancy, her postnatal bleeding is whatever blood exits following the first child, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad and Zufar, may Allah have mercy on them, said that [postnatal bleeding is] from the second child.

باب الأنجاس

IMPURITIES AND THEIR CLEANSING

تطهير النجاسة واجب من بدن المصلي وثوبه والمكان الذي يصلي عليه

The purification of physical impurity from the body of the worshipper, his clothes and the place upon which he prays is obligatory.

ويجوز تطهير النجاسة بالماء وبكل مائع طاهر يمكن إزالتها به كالخل وماء الورد، و إذا أصابت الخف نجاسة لها جرم فجفت فدلكه بالأرض جاز الصلوة فيه

It is permitted to purify physical impurity with water and with every liquid [with which] its removal is [practically] possible, such as vinegar and rosewater. When physical impurity that has body, comes into contact with a *khuff* [or a shoe] and dries [upon it], and then one rubs it on the ground, prayer is permitted in it.

والمني نجس يجب غسل رطبه فإذا جف على الثوب أجزأه فيه الفرك، والنجاسة إذا أصابت المِرأة أو السيف اكتفي بمسحهما، و إذا أصابت الأرض نجاسة فجفت بالشمس وذهب أثرها جازت الصلاة على مكانها ولا يجوز التيمم منها

Semen is an impurity whose wetness is to be washed, but if it dries on the garment then scraping it is sufficient for it. When physical impurity comes into contact with a mirror or a sword, it is sufficient to wipe them both. If physical impurity falls on the ground, dries in the sun and its traces go away, then prayer is permitted on its location, but *tayammum* is not allowed from [that place].

Heavy and Light Filth

ومن أصابته من النجاسة المغلظة كالدم والبول والغائط والخمر مقدار الدرهم وما دونه جازت الصلاة معه و إن زاد لم يجز

Prayer is permitted when heavy filth (*najāsah mughallaẓah*), like blood, urine, faeces and wine, comes into contact with someone, to the extent of the size of a dirham or whatever is less than that. If [the heavy filth] is more [than this amount, then] prayer is not permitted [with it].

و إن أصابته نجاسة مخففة كبول ما يؤكل لحمه، جازت الصلاة معه ما لم يبلغ ربع الثوب

If light filth (*najāsah mukhaffafah*), like the urine of [an animal] whose meat can [legally] be eaten, comes into contact with him, then prayer is permitted with it as long as it does not reach [the extent of] a quarter of the garment.

Visible and Invisible Filth

وتطهير النجاسة التي يجب غسلها على وجهين: فما كان له عين مرئية فطهارتها زوال عينها إلا أن يبقى من أثرها ما يشق إزالتها وما ليس له عين مرئية فطهارتها أن يغسل حتى يغلب على ظن الغاسل أنه قد طهر

Purification of physical impurity, the washing of which is obligatory, is of two types:

1. Whatever has a visible substance, its cleansing is [deemed to be] the removal of its substance, unless such traces remain which are difficult to remove,
2. Whatever does not have a visible substance, its cleansing is that it be washed until the one washing is inclined to believe that it is now pure.

Istinjā' – Cleansing the Excretory Passages

والاستنجاء سنة يجزئ فيه الحجر والمدر وما قام مقامهما يمسحه حتى ينقيه وليس فيه عدد مسنون وغسله بالماء أفضل و إن تجاوزت النجاسة مخرجها لم يجز فيه إلا الماء والمائع ولا يستنجي بعظم ولا روث ولا بطعام ولا بيمينه

Istinjā' is sunnah.

Stones, clods and [suitable] alternatives are sufficient for it.

One rubs it until [the area] is clean, and there is no prescribed number [of stones or rubbings] for it.

Washing it with water is better [and] if the physical impurity exceeds its orifice, [then nothing] other than water and liquids are permitted for its removal.

Istinjā' is not performed with:

1. Bones,
2. Dung,
3. Food, or
4. The right hand.

كتاب الصلاة

ṢALĀH – PRAYER

The Timings of Prayer

أول وقت الفجر إذا طلع الفجر الثاني وهو البياض المعترض في الأفق وآخر وقتها ما لم تطلع الشمس

The beginning of the time of *fajr* is when the second *fajr* (dawn) rises, and that is the whiteness that spreads across the horizon. The end of the time [of *fajr*] is as long as the sun has not yet risen.[28]

وأول وقت الظهر إذا زالت الشمس وآخر وقتها عند أبي حنيفة رحمه الله تعالى إذا صار ظل كل شيء مثليه سوي فيء الزوال، وقال أبو يوسف و محمد رحمهما الله تعالى : إذا صار ظل كل شيء مثله

The beginning of the time of *ẓuhr* is when the sun declines [from the meridian]. The end of its time, according to Abū Ḥanīfah, may Allah have mercy on him, is when the shadow of everything becomes twice its size, excluding the [normal] shade at midday. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that [the end of the time of *ẓuhr*] is when the shadow of everything becomes [equal to] its size.

وأول وقت العصر إذا خرج وقت الظهر على القولين وآخر وقتها ما لم تغرب الشمس

The beginning of the time of *'aṣr* is when the time for *ẓuhr* has expired, according to either statement of the two [preceding statements], and the end of its time is as long as the sun has not set.

وأول وقت المغرب إذا غربت الشمس وآخر وقتها ما لم تغب الشفق وهو البياض الذي يرى في الأفق بعد الحمرة عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف و محمد رحمهما الله تعالى: هو الحمرة

The beginning of the time of *maghrib* is when the sun has set, and the end of its time is as long as the twilight (*shafaq*) has not departed, and that is the whiteness that is seen on the horizon after the redness according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that [twilight] is the redness.

وأول وقت العشاء إذا غاب الشفق وآخر وقتها ما لم يطلع الفجر الثاني

The beginning of the time of *'ishā'* is when the twilight departs, and the end of its time is as long as the second *fajr* has not appeared.

وأول وقت الوتر بعد العشاء وآخر وقتها ما لم يطلع الفجر

The beginning of the time of the *witr* [prayer] is after *'ishā'* [prayer], and the end of its time is as long as the *fajr* has not appeared.[29]

Recommended Times for Prayer

و يستحب الإسفار بالفجر، والإبراد بالظهر في الصيف وتقديمها في الشتاء وتأخير العصر ما لم تتغير الشمس وتعجيل المغرب وتأخير العشاء إلى ما قبل ثلث الليل و يستحب في الوتر لمن يألف صلاة الليل أن يؤخر الوتر إلى آخر الليل و إن لم يثق بالانتباه أوتر قبل النوم

It is recommended:

1. To brighten the *fajr* [prayer],[30]
2. To cool the *ẓuhr* [prayer] in the summer,[31] and to hasten it in the winter,

   To delay the *'aṣr* [prayer] for as long the sun does not change [its

3. colour],[32] and

4. To hasten *maghrib* [prayer],
5. To delay the *'ishā'* [prayer] up until just before one-third of the night.

In the case of the *witr* [prayer], it is recommended for someone who is accustomed to performing the prayer of the night,[33] that he delays the *witr* [prayer] to the end of the night. If he is not confident on waking up [for it], he performs the *witr* [prayer] before sleeping.

باب الأذان

ADHĀN – THE CALL TO PRAYER AND ITS RULING

الأذان سنة للصلوات الخمس والجمعة دون ما سواها، ولا ترجيع فيه ويزيد في أذان الفجر بعد الفلاح : الصلاة خير من النوم مرتين

Adhān is sunnah for the five [daily] prayers and for the *Jumu'ah* prayer, [but] not for [prayers] besides those.[34]

There is no modulation (*tarjī'*) in it.

One[35] adds [the words] *"aṣ-ṣalātu khayru'm-mina'n-nawm* – Prayer is better than sleep," twice after [saying, *"ḥayya 'alā]'l-falāḥ* – [Hurry towards] success," in the *adhān of fajr*.

والإقامة مثل الأذان إلا أنه يزيد فيها بعد حي على الفلاح : قد قامت الصلاة مرتين

The *iqāmah*[36] is similar to the *adhān*, except that one adds "*qad qāmati 's-ṣalāh* – prayer has been established," twice after "*ḥayya 'alā 'l-falāḥ*" in it.

ويترسل في الأذان ويحدر في الإقامة ويستقبل بهما القبلة فإذا بلغ إلى الصلاة والفلاح حول وجهه يمينا وشمالا

One says the *adhān* leisurely and is rapid in the *iqāmah*.

One faces the *qiblah*[37] for both [the *adhān* and the *iqāmah*], but when [the *mu'adhdhin*] reaches the [word of] *aṣ-ṣalāh* (in *"ḥayya 'alā 'ṣ -ṣalāh"*) and *al-falāḥ* [in *"ḥayya 'alā 'l-falāḥ*"], he turns his face towards the right and the left [respectively].

ويؤذن للفائتة ويقيم فإن فاتته صلوات أذن للأولى وأقام وكان
مخيرا في الثانية : إن شاء أذن وأقام وإن شاء اقتصر على الإقامة

One calls the *adhān* for the missed prayer and [also] says the *iqāmah*. If someone has missed many prayers, he calls the *adhān* for the first [prayer] and says the *iqāmah*, and for the second, he has the choice; if he wants, he calls the *adhān* and says the *iqāmah*, or, if he wants, he restricts himself to the *iqāmah* [only].

وينبغي أن يؤذن ويقيم على طهر فإن أذن على غير وضوء جاز
ويكره أن يقيم على غير وضوء أو يؤذن وهو جنب ولا يؤذن لصلاة

قبل دخول وقتها إلا في الفجر عند أبي يوسف رحمه الله تعالى

One ought to call the *adhān* and say the *iqāmah* in [the state of] purity, but it is permitted if one calls the *adhān* without *wuḍū'*. However, it is disapproved [for one] to say the *iqāmah* without *wuḍū'*, or to call the *adhān* whilst *junub*.

One is not to call the *adhān* for a prayer prior to the entry of its time, except for *fajr* according to Abū Yūsuf, may Allah have mercy on him.

باب شروط الصلاة التي تتقدمها

PRECONDITIONS OF PRAYER

يجب على المصلي أن يقدم الطهارة من الأحداث والأنجاس على
ما قدمناه ويستر عورته

It is obligatory on the worshipper (*muṣallī):*

1. To give precedence to purity from ritual and physical impurities, according to what we have mentioned earlier [in the last chapter],

2. To conceal his nakedness (*‘awrah*),

والعورة من الرجل : ما تحت السرة إلى الركبة والركبة عورة دون السرة

The nakedness of a man is whatever is below the navel to the knee – the knee is [included in] the nakedness but not the navel.

وبدن المرأة الحرة كله عورة إلا وجهها وكفيها

All of the body of a free woman is nakedness, except her face and her two hands.

وما كان عورة من الرجل فهو عورة من الأمة وبطنها وظهرها عورة وما سوى ذلك من بدنها ليس بعورة

Whatever is nakedness for a man, that is [also] nakedness for a slave-woman, as well as her belly and her back. Anything else of her body is not nakedness.

ومن لم يجد ما يزيل به النجاسة صلى معها ولم يعد

Whoever does not find that with which he may remove the physical impurity, prays with [the physical impurity], and he is not obliged to repeat the prayer.

ومن لم يجد ثوبا صلى عريانا قاعدا يومئ بالركوع والسجود

Whoever does not find garments, prays naked, seated, indicating the bowing and the prostration.

فإن صلى قائما أجزاه والأول أفضل

If he prays standing, it suffices him, but the former [method] is better.

و ينوي للصلاة التي يدخل فيها بنية لا يفصل بينها و بين التحريمة بعمل، و يستقبل القبلة إلا أن يكون خائفا فيصلي إلى أي جهة قدر

[And it is obligatory on the worshipper (*muṣallī*):]

3. To make the intention for the prayer in which he is about to enter, with an intention which he does not separate from the *taḥrīmah*[38] by any other action,

4. To face the *qiblah*, except when he is in a state of fear [in which case] he may pray [facing] any direction he is able.

فإن اشتبهت عليه القبلة وليس بحضر من يسأله عنها اجتهد وصلى

If the *qiblah* is unclear to him and there is no one present whom he may ask about it, he exerts himself [in working out the *qiblah*] and then prays.

فإن علم أنه أخطأ بعد ما صلى فلا إعادة عليه و إن علم ذلك وهو في الصلاة استدار إلى القبلة وبنى عليها

If he comes to know after he has prayed that he has made an error [in determining the *qiblah*], then there is no repetition [of the prayer due] upon him, but if he comes to know that whilst in the prayer, he turns around towards the *qiblah* and forms [the remainder of the prayer] upon [what he has already done].[39]

باب صفة الصلاة

THE PROPERTIES OF PRAYER

فرائض الصلاة ستة: التحريمة، والقيام والقراءة والركوع والسجود
والقعدة الأخيرة مقدار التشهد، وما زاد على ذلك فهو سنة

Obligations (*Farā'iḍ*)

The obligations of the prayer are six:

1. Saying the 'Consecratory *Takbīr' (taḥrīmah*),
2. Standing (*qiyām*),
3. Recitation [of the Qur'ān] (*qirā'ah*),
4. Bowing (rukū'),
5. Prostration (*sujūd*), and
6. Final sitting (*qa'dah*) for the extent of the *tashahhud*.[40]

Anything beyond this is sunnah.[41]

THE PERFORMANCE OF PRAYER

The First *Rak'ah* or Unit

و إذا دخل الرجل في صلاته كبر ورفع يديه مع التكبير حتى
يحاذي بإبهاميه شحمة أذنيه فإن قال بدلا من التكبير : الله أجل
أو أعظم، أو الرحمن أكبر أجزأه عند أبي حنيفة ومحمد رحمهما الله
تعالى وقال أبو يوسف رحمه الله تعالى : لا يجوز إلا أن يقول الله
أكبر أو الله الأكبر أو الله الكبير

When a man enters his prayer, he says the *takbīr*,[42] and raises both his hands with the *takbīr* until his thumbs are parallel to his earlobes.

According to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, it suffices him to say, " *Allāhu ajall* – Allah is more majestic," or "*[Allāhu] a'ẓam* – Allah is more tremendous," or "*ar-Raḥmānu akbar* – the Most Merciful is greater," in the place of the [normal] *takbīr*. Abū Yūsuf, may Allah have mercy on him, however, said that it is not permitted for him to say anything but, " *Allāhu akbar* – Allah is greater," or " *Allāhu'l-akbar* –

Allah is the Greatest,” or “ *Allāhu’l-Kabīr* – Allah is the Great.”

و يعتمد بيده اليمنى على اليسرى و يضعهما تحت السرة ثم يقول :
سبحانك اللهم و بحمدك وتبارك اسمك وتعالى جدك ولا إله غيرك
و يستعيذ بالله من الشيطان الرجيم و يقرأ بسم الله الرحمن الرحيم
و يسر بهما

[In *qiyām*] he rests his right hand over his left, and places both beneath the navel.

Then, he says, *“subḥānak’Allāhumma wa bi-ḥamdika wa tabāraka’smuka wa ta‘ālā jadduka wa lā ilāha ghayruka* – Glory be to You, O Allah. All praise is for You. Blessed is Your name, exalted is Your dominion and there is no god other than You.”

He [then] seeks refuge with Allah from the accursed Shayṭān[43] and recites, *“bismi’llāhi’r-raḥmāni’r-raḥīm* – In the name of Allah, the All Merciful, the Most Merciful,” doing so inaudibly[44] in both cases.

ثم يقرأ فاتحة الكتاب وسورة معها أو ثلاث آيات من أي سورة
شاء و إذا قال الإمام ﴿ ولا الضالين ﴾ قال : آمين و يقولها المؤتم
و يخفيها

Then, he recites the Fātiḥah[45] of the Book (Qur’ān), and a chapter (*sūrah*) with it, or three *āyahs* (verses) from any chapter he wishes.

When the imam[46] says, “…*wa lā’ḍ-ḍāllīn,*” he says, “ *āmīn”* and the follower also says it, but inaudibly.

ثم يكبر ويركع ويعتمد بيديه على ركبتيه ويفرج أصابعه
ويبسط ظهره ولا يرفع رأسه ولا ينكسه ويقول في ركوعه :
سبحان ربي العظيم ثلاثا وذلك أدناه ثم يرفع رأسه و يقول :سمع
الله لمن حمده و يقول المؤتم : ربنا لك الحمد

Then, he says the *takbīr* and perform the *rukū‘;* he rests his hands on his

knees, opens his fingers wide, levels his back and neither raises nor lowers his head [excessively]. [Once] in *rukū‘* he says, *“subḥāna rabbī al-‘aẓ īm* – Glorious is my Lord, the Great” thrice, and that is the minimum.

Then, he raises his head saying, *“samia’llāhu li-man ḥamidah* – Allah hears the one who praises Him.”

The follower says, *“rabbanā laka’l-ḥamd* – Our Lord, all praise is for You.”[47]

فإذا استوى قائما كبر وسجد واعتمد بيديه على الأرض ووضع وجهه بين كفيه وسجد على أنفه وجبهته، فإن اقتصر على أحدهما جاز عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: لا يجوز الاقتصار على الأنف إلا من عذر

When upright in the standing posture, he says the *takbīr* and prostrates. He rests his hands on the ground and places his face between his palms. He prostrates on his nose and forehead. If he confines himself to [only] one of the two, it is permitted, according to Abū Ḥanīfah, may Allah have mercy on him, but the two of them,[48] may Allah have mercy on them, said that restricting [the *sajdah*] to the nose is not permitted except because of a valid excuse.

فإن سجد على كور عمامته أو على فاضل ثوبه جاز

If he prostrates on the fold of his turban, or on the extra [portion] of his clothing it is permitted.

ويبدي ضبعيه ويجافي بطنه عن فخذيه ويوجه أصابع رجليه نحو القبلة ويقول في سجوده : سبحان ربي الأعلى ثلاثا وذلك أدناه

In his *sajdah*, he opens up his armpits and separates his stomach from his thighs, points the toes of his feet towards the *qiblah* and says *“subḥāna rabbiya’l-alā* – Glorious is my Lord, the Most Exalted” thrice, and that is the minimum.

ثم يرفع رأسه و يكبر و إذا اطمأن جالسا كبر وسجد

He then raises his head [whilst] saying the *takbīr*, and when he is settled in the sitting posture, he says the *takbīr* [again] and prostrates.

فإذا اطمأن ساجدا كبر واستوى قائما على صدور قدميه ولا يقعد ولا يعتمد بيديه على الأرض

When he is settled in the [second] *sajdah*, he says the *takbīr* and becomes erect in the standing posture, upon [the use of] the balls of the feet;[49] he does not sit nor support himself with his hands on the ground.

The Second *Rak'ah* or Unit

و يفعل في الركعة الثانية مثل ما فعل في الأولى إلا أنه لا يستفتح ولا يتعوذ ولا يرفع يديه إلا في التكبيرة الأولى

In the second *rak'ah*, he does just like he did in the first, except that he does not open [the unit with "*subḥānak'Allāhumma*…"], nor does he recite the *ta'awwudh* or raise his hands [to his ears], other than in the [case of the] first *takbīr*.[50]

فإذا رفع رأسه من السجدة الثانية في الركعة الثانية افترش رجله اليسرى فجلس عليها ونصب اليمنى نصبا ووجه أصابعه نحو القبلة ووضع يديه على فخذيه و بسط أصابعه ثم يتشهد

When he raises his head from the second prostration in the second *rak'ah*, he lays his left foot down and sits on it, and he erects his right foot [firmly] and directs its toes towards the *qiblah*. He places his hands on his thighs and spreads his fingers flat [on them], and says the *tashahhud*.

والتشهد أن يقول : التحيات لله والصلوات والطيبات السلام
عليك أيها النبي ورحمة الله وبركاته السلام علينا وعلى عباد الله
الصالحين أشهد أن لا إله إلا الله وأشهد أن محمدا عبده ورسوله،

ولا يزيد على هذا في القعدة الأولى

The *tashahhud* is that he says, *"at-taḥiyyātu li'llāhi wa'ṣ-ṣalawātu wa'ṭ-ṭayyibātu, as-salāmu 'alayka ayyuha'n-nabiyyu wa-raḥmatu'llāhi wa-barakātu-hu, as-salāmu 'alaynā wa 'alā 'ibādi'llāhi'ṣ-ṣāliḥīn, ash-hadu al-lā ilāha illa'llāhu wa ash-hadu anna muḥammadan 'abdu-hu wa-rasūluh."* In the first sitting (*al-qa'dat al-ūlā*), he does not go beyond that [point].

ويقرأ في الركعتين الأخريين بفاتحة الكتاب خاصة

In the following two *rak'ahs*, he recites the Fātiḥah of the Book only[51]

فإذا جلس في آخر الصلاة جلس كما جلس في الأولى وتشهد

When he sits at the end of the prayer, he sits as he sat in the first [sitting position at the end of the first two *rak'ahs*], and says the *tashahhud*.

وصلى على النبي صلى الله عليه وسلم ودعا بما شاء مما يشبه ألفاظ
القرآن والأدعية المأثورة ولا يدعو بما يشبه كلام الناس

He asks for blessings upon the Prophet ﷺ, and makes supplications for whatever he likes with what resembles the words of the Qur'ān and transmitted supplications. He does not supplicate with [words] that resemble the speech of humans.

ثم يسلم عن يمينه فيقول : السلام عليكم ورحمة الله وعن يساره
مثل ذلك

Thereafter, he says the salutation (*salām*) to his right and says, *"as-salāmu 'alaykum wa raḥmatu'llāh"* and then to his left, likewise.

Recitation

ويجهر بالقراءة في الفجر وفي الركعتين الأولين من المغرب

والعشاء إن كان إماما ويخفي القراءة فيما بعد الأولين و إن كان
منفردا فهو مخير : إن شاء جهر وأسمع نفسه و إن شاء خافت
ويخفي الإمام القراءة في الظهر والعصر

If one is [himself] the imam, he raises his voice with the recitation [of the Fātiḥah and the additional chapter] in:

1. The *fajr* [prayer], and in the first two *rak'ahs* of
2. The maghrib, and
3. The *'ishā'* [prayer].

He is to make his recitation inaudible in [the case of] whatever follows the first two *rak'ahs*.

If someone is [praying] alone, then he has a choice; if he wishes, he may raise his voice and make himself hear [the recitation], or if he wishes, he may make it inaudible.

In the *ẓuhr* and *'aṣr* [prayers], the imam makes his recitation inaudible [in all the *rak'ahs*].

The *Witr* Prayer

والوتر: ثلاث ركعات لا يفصل بينها بسلام، ويقنت في الثالثة
قبل الركوع في جميع السنة ويقرأ في كل ركعة من الوتر فاتحة
الكتاب وسورة معها فإذا أراد أن يقنت كبر ورفع يديه ثم قنت،
ولا يقنت في صلاة غيرها

The *witr* [prayer] is three *rak'ahs;* he is not to separate them with salutation. He recites the [*du'ā] qunūt* in the third [*rak'ah* immediately] before the *rukū'*, throughout the year.

In each unit of the *witr* [prayer], he recites the Fātiḥah of the Book with a

chapter [added] to it, and when he wants to [recite] the *qunūt*, he says the *takbīr* and raises his hands [to his earlobes], and then recites the *qunūt*. He does not recite the *qunūt* in any other prayer.

وليس في شيء من الصلوة قراءة سورة بعينها لا يجوز غيرها،
ويكره أن يتخذ قراءة سورة بعينها للصلاة لا يقرأ فيها غيرها

The recitation of a particular chapter and [believing] that any other [chapter] will not suffice is not a part of prayer.

It is disapproved [for one] to adopt the recitation of a specific chapter for the prayer not reciting any other [chapter] in it.[52]

Minimum Recitation

وأدنى ما يجزئ من القراءة في الصلاة ما يتناوله اسم القرآن عند
أبي حنيفة رحمه الله تعالى وقال أبو يوسف ومحمد رحمهما الله
تعالى: لا يجوز أقل من ثلاث آيات قصار أو آية طويلة، ولا يقرأ
المؤتم خلف الإمام، ومن أراد الدخول في صلاة غيره يحتاج إلى
نيتين : نية الصلاة ونية المتابعة

The least amount of recitation in the prayer that suffices is whatever is comprised under the name ‘the Qur’ān’, according to Abū Ḥanīfah, may Allah have mercy on him, whereas Abū Yūsuf and Muḥammad, may Allah have mercy on them, said, “Less than three short verses or one long verse[53] is not allowed.”

The follower is not to recite behind the imam.[54]

Whoever wants to enter into the prayer led by another requires two intentions:

1. An intention for the prayer, and
2. An intention for the [act of] following.

باب الجماعة

THE *JAMĀ‘AH* OR CONGREGATION

والجماعة : سنة مؤكدة

Congregation (*jamā‘ah*) is a *sunnah mu’akkadah* [for the obligatory prayers].[55]

Imamah – Leading the Congregational Prayer

وأولى الناس بالإمامة أعلمهم بالسنة فإن تساووا فأقرأهم فإن
تساووا فأورعهم فإن تساووا فأسنهم

The most worthy of people for leading the congregational prayer are:

1. The most knowledgeable of them in the sunnah. If they are equal [in that respect],
2. The best of them in reciting [the Qur’ān], then if they are equal,
3. The most scrupulous of them, then if they are equal,
4. The eldest of them.

ويكره تقديم العبد والأعرابي والفاسق والأعمى وولد الزنا فإن
تقدموا جاز، وينبغي للإمام أن لا يطول بهم الصلاة

It is disapproved to give priority [as the imam] to:

1. A slave,
2. A Bedouin,[56]
3. A dissolute,
4. A blind man, and
5. The child of adultery.

If they put themselves forward [to lead the prayer], it is valid.

The imam does not prolong the prayer for them.

Congregation of Women

ويكره للنساء أن يصلين وحدهن بجماعة فإن فعلن وقفت الإمامة وسطهن كالعراة

It is disapproved for women to pray in congregation by themselves, but if they do, [then] the imam is to stand in between them,[57] as [in the case of] naked people.[58]

Sequence of Rows

ومن صلى مع واحد أقامه عن يمينه، وإن كانا اثنين تقدمهما، ولا يجوز للرجال أن يقتدوا بامرأة أو صبي، ويصف الرجال ثم الصبيان ثم الخنثى ثم النساء، فإن قامت امرأة إلى جنب رجل مشتركان في صلاة واحدة فسدت صلاته

Whoever prays with [only] one other person makes him stand to his right, and if there are two people [other than the imam], then [he stands] in front of them.

It is not allowed for men to follow a woman [in congregational prayer], nor a minor.

[In the congregational prayer,] the imam forms [the front] rows of men, then minors [behind the men], then effeminate men/hermaphrodites and then women.

If a woman stands next to a man [in congregational prayer] participating in one and the same prayer, the man’s prayer is void.

Other Issues Pertaining to Prayer

ويكره للنساء حضور الجماعات ولا بأس بأن تخرج العجوز في

الفجر والمغرب والعشاء عند أبي حنيفة رحمه الله تعالى و قال أبو يوسف و محمد رحمهما الله تعالى: يجوز خروج العجوز في سائر الصلوات

It is disapproved for women to attend the congregation, but there is no harm if elderly women go out for *fajr*, *maghrib* and *'ishā'*, according to Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that elderly women are permitted to go out for every prayer.

ولا يصلي الطاهر خلف من به سلس البول ولا الطاهرة خلف المستحاضة ولا القارئ خلف الأمي ولا المكتسي خلف العريان ويجوز أن يؤم المتيمم المتوضئين والماسح على الخفين الغاسلين ويصلي القائم خلف القاعد ولا يصلي الذي يركع ويسجد خلف المومئ ولا يصلي المفترض خلف المتنفل ولا من يصلي فرضا خلف من يصلي فرضا آخر ويصلي المتنفل خلف المفترض، ومن اقتدى بإمام ثم علم أنه على غير طهارة اعاد الصلاة

Someone in the state of purity is not allowed to pray behind someone with urinary incontinence, nor pure women behind the woman suffering from chronic menstrual bleeding, nor a reader [of the Qur'ān] behind an illiterate person and nor a clothed person behind a naked person.

It is permitted for someone who has done *tayammum* to lead those who have done *wuḍū'* [in congregational prayer], and someone who has wiped over his *khuffs* to lead those who wash [their feet] and the person standing may pray behind someone who sits.

The person who is performing *rukū'* and *sujūd* is not to pray behind someone who gestures,[59] the person performing the obligatory [prayer] is not to pray behind someone who is performing supererogatory prayers, and nor is someone who is performing one obligatory prayer [to pray] behind someone who is praying a different obligatory prayer.

Someone who is praying as supererogatory may pray behind someone who is praying the obligatory prayer.[60]

Whoever follows an imam [in prayer] and then realises that [the imam] was without purity, must repeat his prayer.

ويكره للمصلي أن يعبث بثوبه أو بجسده ولا يقلب الحصى إلا
أن لا يمكنه السجود عليه فيسويه مرة واحدة ولا يفرقع أصابعه و
لا يشبك ولا يتخصر ولا يسدل ثوبه و لا يكفه ولا يعقص شعره
و لا يلتفت يمينا و شمالا ولا يقعي كإقعاء الكلب ولا يرد السلام
بلسانه ولا بيده ولا يتربع إلا من عذر ولا يأكل ولا يشرب

It is disapproved for the worshipper to fidget with his clothing, or [with parts of] his body [during the prayer], and he does not move pebbles away unless they render prostration impossible, in which case he may smooth them away only once.

He does not:

1. Crack his fingers,[61]
2. Interlace [them],
3. Place his hands on his flanks,[62]
4. Drape his garment loosely [over his head],
5. Gather it [with his hands],
6. Braid his hair,
7. Turn towards the right or left,
8. Squat like the squatting of a dog,[63]
9. Reply to greetings with his tongue or [by gesturing] with his hand,
10. Sit cross-legged, other than with a valid excuse, or
11. Eat or drink.

فإن سبقه الحدث انصرف وتوضأ وبنى على صلاته إن لم يكن
إماما فإن كان إماما استخلف وتوضأ وبنى على صلاته ما لم يتكلم
والاستئناف أفضل

If he is overcome with minor ritual impurity, and if he is not the imam, he turns away [and leaves the prayer], performs *wuḍū'* and reestablishes his

prayer [based on where he left off].[64] If, however, he is the imam, then he appoints someone as [substitute] imam, performs *wuḍū'* [himself] and performs his prayer [based on where he left off], as long as he has not spoken. Renewal of the prayer from the very beginning, [however,] is better [in either case].

That which Nullifies *Wudu'*

و إن نام فاحتلم أو جن أو أغمي عليه أو قهقه استأنف الوضوء والصلاة

If [during prayer]:

1. Someone falls asleep and experiences seminal discharge,
2. Becomes insane,
3. Is overcome with unconsciousness, or
4. Laughs [audibly],

he renews his *wuḍū'* and [also] his prayer.

و إن تكلم في صلاته ساهيا أو عامدا بطلت صلاته، و إن سبقه الحدث بعد ما قعد قدرالتشهد توضأ وسلم و إن تعمد الحدث في هذه الحالة أو تكلم أو عمل عملا ينافي الصلاة تمت صلاته، و إن رأى المتيمم الماء في صلاته بطلت صلاته

If someone talks in his prayer, whether deliberately or out of forgetfulness, his prayer is void.

If someone is overcome with minor ritual impurity after he has sat for a period equal to the *tashahhud*, [then] he is to perform *wuḍū'* and perform [only] the salutation [of the prayer].

If he:

1. Deliberately acquires minor ritual impurity in these circumstances,
2. Speaks, or
3. Does something which is contrary to the [nature of] the prayer, his

prayer is [still] valid.

If someone who has performed *tayammum* sees water during his prayer, his prayer is invalid.

و إن رآه بعدما قعد قدر التشهد أو كان ماسحا فانقضت مدة
مسحه أو خلع خفيه بعمل قليل أو كان أميا فتعلم سورة أو عريانا
فوجد ثوبا أو مومئا فقدر على الركوع والسجود أو تذكر أن عليه
صلاة قبل هذه أو أحدث الإمام القارئ فاستخلف أميا أو طلعت
الشمس في صلوة الفجر أو دخل وقت العصر في الجمعة أو كان
ماسحا على الجبيرة فسقطت عن برء أوكانت مستحاضة فبرأت
بطلت صلاتهم في قول أبي حنيفة رحمه الله تعالى، وقال أبو يوسف
ومحمد رحمهما الله تعالى : تمت صلاتهم في هذه المسائل

1. If he sees [water] after he has sat [for a period] equal to the *tashahhud*,
2. Or he was wiping over his *khuffs* and the period of his wiping elapses,
3. Or he removes his *khuffs* with a little action,
4. Or he was illiterate and learnt a chapter,
5. Or [he was] naked and found garments,
6. Or [was praying] with gestures and acquired the ability to bow and prostrate,
7. Or he remembered that a prayer was due on him prior to this [prayer],
8. Or the Qur’ān-reciting imam became ritually impure with a lesser impurity and appointed an illiterate [as imam],
9. Or the sun rose during the *fajr* prayer,
10. Or the time for *‘aṣr* [prayer] has entered during the *jumu‘ah* [prayer],
11. Or he was wiping over a splint[65] and it fell off due to healing [of the wound],
12. Or she was suffering from chronic menstrual bleeding and became cured,[66]

their prayer is invalid according to Abū Ḥanīfah, may Allah have mercy on him. According to Abū Yūsuf and Muḥammad, may Allah have mercy on

them, their prayer is valid in these cases.

باب قضاء الفوائت

DISCHARGE (*QAḌĀ’*) OF MISSED PRAYERS

ومن فاتته صلاة قضاها إذا ذكرها وقدمها على صلوة الوقت إلا
أن يخاف فوت صلاة الوقت فيقدم صلاة الوقت على الفائتة ثم
يقضيها ومن فاتته صلوات رتبها في القضاء كما وجبت في الأصل
إلا أن تزيد الفوائت على خمس صلوات فيسقط الترتيب فيها

Whoever misses a prayer discharges it (*qaḍā’*) when he remembers it.

He advances its [performance] before the prayer of that particular time,[67] unless he fears [that] the prayer of that time will be lost [due to the shortage of time], [in which case] he prioritises [the performance] of the prayer of that time over the missed prayer, and then he discharges [the missed prayer].

Whoever has missed some prayers, arranges them for their discharge (*qaḍā’*) in the sequence in which they originally became obligatory,[68] unless the missed prayers are more than five prayers, in which case the sequential order is waived.[69]

باب الأوقات التي تكره فيها الصلاة

DISAPPROVED TIMES FOR PRAYER

لا تجوز الصلاة عند طلوع الشمس ولا عند غروبها إلا عصر يومه
ولا عند قيامها في الظهيرة ولا يصلي على جنازة ولا يسجد للتلاوة

Prayer is not permitted:

1. During sunrise,
2. During sunset, other than the *‘aṣr* [prayer] of that day, and
3. During [the sun’s] meridian at midday.

[During these times] one does not pray at a funeral, nor does he perform a prostration of recitation (*sajdat at-tilāwah*).

ويكره أن يتنفل بعد صلاة الفجر حتى تطلع الشمس وبعد صلاة العصر حتى تغرب الشمس ولا بأس بأن يصلي في هذين الوقتين الفوائت ويسجد للتلاوة ويصلي على الجنازة ولا يصلي ركعتي الطواف

It is disapproved for someone to perform supererogatory prayers after the *fajr* prayer [until] the sun has risen, and after the *'aṣr* prayer until the sun has set, but there is, however, no harm if someone performs missed prayers, the prostration of recitation or prays at a funeral during these two times and one does not perform the two units of the circumambulation [of the Ka'bah].

ويكره أن يتنفل بعد طلوع الفجر بأكثر من ركعتي الفجر ولا يتنفل قبل المغرب

It is disapproved to perform any more supererogatory prayers after the appearance of the *fajr* than the two units of the *fajr* [prayer].

One does not perform supererogatory prayers prior to the *maghrib* [prayer].[70]

باب النوافل

NAWĀFIL – SUPEREROGATORY PRAYERS

السنة في الصلاة أن يصلي ركعتين بعد طلوع الفجر وأربعا قبل الظهر وركعتين بعدها وأربعا قبل العصر وإن شاء ركعتين وركعتين بعد المغرب وأربعا قبل العشاء وأربعا بعدها وإن شاء ركعتين

The sunnah in prayer is to pray:

1. Two units or *rak'ahs* after the appearance *of fajr*,[71]
2. Four before the *ẓuhr* [prayer] and two units after it,
3. Four before the *'aṣr* [prayer], but if one wants [just] two units,
4. Two units after the *maghrib* [prayer], and

   Four before the *'ishā'* [prayer] and four [units] after it, but if one

5. wants [then just] two units.

ونوافل النهار إن شاء صلى ركعتين بتسليمة واحدة و إن شاء أربعا وتكره الزيادة على ذلك، فأما نوافل الليل فقال أبو حنيفة رحمه الله تعالى إن صلى ثماني ركعات بتسليمة واحدة جاز وتكره الزيادة على ذلك، وقال أبو يوسف ومحمد رحمهما الله تعالى: لا

يزيد بالليل على ركعتين بتسليمة واحدة

With regards to the supererogatory prayers of the day, if one wishes, he may pray two units with one salutation, and if he wishes, [he may pray] four; [any] more than that is disapproved.

With regards to the supererogatory prayers of the night, Abū Ḥanīfah, may Allah have mercy on him, said that if one prays eight units with one salutation, it is permitted, and more than that is disapproved. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that one does not exceed two units with one salutation during the night [supererogatory prayers].

The Ruling of Recitation in Supererogatory Prayers

والقراءة واجبة في الركعتين الأولين وهو مخير في الأخريين إن شاء قرأ الفاتحة و إن شاء سكت و إن شاء سبح، والقراءة واجبة في جميع ركعات النفل جميع الوتر

Recitation is incumbent in the first two units [of obligatory prayers].

In the last two [units], one has a choice:

1. If he wishes, he may recite the Fātiḥah [alone],
2. If he wishes, he may remain silent, or
3. If he wishes, he may recite the *tasbīḥ* (glorification) [alone].

Recitation is incumbent in all units of the supererogatory prayers and

[also] in all units of the *witr* prayer.

ومن دخل في صلاة النفل ثم أفسدها قضاها، فإن صلى أربع
ركعات وقعد في الأولين ثم أفسد الأخريين قضى ركعتين وقال
أبو يوسف رحمه الله تعالى: يقضي أربعا

Whoever enters into a supererogatory prayer and then invalidates it performs it again by way of *qaḍā'*.[72] If he prays four units, [in which] he sits at [the end of] the first two and then renders the other two void, he performs two units by way of *qaḍā'*, but Abū Yūsuf, may Allah have mercy on him, said that he performs [all] four [units] by way *of qaḍā'*.

ويصلي النافلة قاعدا مع القدرة على القيام وإن افتتحها قائما ثم
قعد جاز عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى:
لا يجوز إلا من عذر

One may perform supererogatory prayers seated, even though he has the ability to stand. If someone begins the prayer standing and then sits down [and thus, continues the prayer], it is valid according to Abū Ḥanīfah, may Allah have mercy on him, but the two of them,[73] may Allah have mercy on them, said that it is not valid without a legitimate excuse.

ومن كان خارج المصر ينتفل على دابته إلى أي جهة توجهت
يومئ إيماء

Whoever is [travelling] outside the city may perform supererogatory prayers on his mount, facing towards whichever direction it faces [and] praying with gestures.

باب سجود السهو

PROSTRATIONS FOR ERROR

سجود السهو واجب في الزيادة والنقصان بعد السلام يسجد سجدتين ثم يتشهد و يسلم

The prostration of error (*sajdat as-sahw*) is incumbent in the event of an [undue] excess or a deficiency [in the prayer], and [it is performed] after the salutation.

و يلزمه سجود السهو إذا زاد في صلاته فعلا من جنسها ليس منها أو ترك فعلا مسنونا أو ترك قراءة فاتحة الكتاب أو القنوت أو التشهد أو تكبيرات العيدين أو جهر الإمام فيما يخافت أو خافت فيما يجهر

One performs two prostrations [of error], then the *tashahhud* and then the salutation.

The prostration of error becomes binding upon him when he:

1. Adds an act to his prayer that is similar to [the prayer] but is not a part of it, or
2. Omits an act prescribed by the sunnah, or
3. Omits:
   i. The recitation of the Fātiḥah of the Book, or
   ii. The *qunūt*, or
   iii. The *tashahhud*, or
   iv. The [additional] *takbīrs* of the two *'Īds*, or
4. The imam recites aloud in what he was supposed to recite inaudibly, or
5. Recites silently in what was supposed to be audible.

وسهو الإمام يوجب على المؤتم السجود فإن لم يسجد الإمام لم يسجد المؤتم فإن سهى المؤتم لم يلزم الإمام ولا المؤتم السجود

The error of the imam obliges the prostration [of error] upon the follower; if the imam does not prostrate [for error], the follower does not prostrate. If the follower makes an error [in his prayer], the prostration [of error] is not

required of the imam nor of the follower.

ومن سهى عن القعدة الأولى ثم تذكر وهو إلى حال القعود
أقرب عاد فجلس وتشهد، و إن كان إلى حال القيام أقرب لم يعد
ويسجد للسهو، و إن سهى عن القعدة الأخيرة فقام إلى الخامسة
رجع إلى القعدة ما لم يسجد وألغى الخامسة وسجد للسهو و إن

قيد الخامسة بسجدة بطل فرضه وتحولت صلاته نفلا وكان عليه
أن يضم إليها ركعة سادسة

Whoever forgets the first sitting (*al-qa'dat al-'ūlā*) [and stands], then remembers it when he is closer to the sitting posture, returns, sits and performs the *tashahhud*. If he is closer to the standing posture, then he does not return [to the sitting posture],[74] and [at the end of the prayer], performs the prostration of error.

If someone forgets the final sitting and stands up for a fifth [unit], he returns to the sitting posture, as long as he has not performed a prostration [within the fifth unit]. He abandons the fifth [unit] and performs the prostration of error [after the salutation concluding the fourth unit]. Nevertheless, if he has secured the fifth [unit] with a prostration, his obligatory [prayer] is void and his prayer becomes a supererogatory prayer and it is incumbent on him to add a sixth unit.

و إن قعد في الرابعة ثم قام ولم يسلم يظنها القعدة الأولى عاد إلى
القعود ما لم يسجد للخامسة وسلم وسجد للسهو و إن قيد الخامسة
بسجدة ضم إليها ركعة أخرى وقد تمت صلاته والركعتان نافلة

If someone sits in the fourth [unit], and then stands and does not perform the salutation believing that [it was] the first sitting, he returns to the sitting posture so long as he has not performed a prostration for the fifth [unit]. He performs the salutation and then performs the prostration of error. If, however, he secures the fifth [unit] with a prostration, he adds another unit to it and his prayer concludes [with that sixth unit]. The two [additional] units

[the fifth and sixth] are supererogatory.

ومن شك في صلاته فلم يدر أثلاثا صلى أم أربعا وذلك أول ما عرض له استأنف الصلاة و إن كان يعرض له كثيرا بنى غالب ظنه إن كان له ظن و إن لم يكن له ظن بنى على اليقين

Whoever has a doubt about his prayer and does not know whether he has prayed three or four [units], and that being the first [incident in prayer] that has occurred to him, begins the prayer again [from the beginning]. If that [uncertainty] occurs to him frequently then he must base [his prayer] on his predominant belief, if he has a [predominant] belief, but if he does not have a [predominant] belief, he bases [his prayer] upon [what he has] certainty [of within the prayer].

باب صلاة المريض

THE PRAYER OF THE SICK

إذا تعذر على المريض القيام صلى قاعدا يركع و يسجد فإن لم يستطع الركوع والسجود أومأ إيماء وجعل السجود أخفض من الركوع، ولا يرفع إلى وجهه شيئا يسجد عليه، فإن لم يستطع القعود استلقى على قفاه وجعل رجليه إلى القبلة وأومأ بالركوع والسجود و إن اضطجع على جنبه ووجهه إلى القبلة وأومأ جاز فإن لم يستطع الإيماء برأسه أخر الصلاة ولا يومئ بعينيه ولا بحاجبيه ولا بقلبه، فإن قدر على القيام ولم يقدر على الركوع والسجود لم يلزمه القيام وجاز أن يصلي قاعدا يومئ إيماء، فإن صلى الصحيح بعض صلاته قائما ثم حدث به مرض أتمها قاعدا يركع و يسجد أو يومئ إيماء إن لم يستطع الركوع والسجود أو مستلقيا إن لم يستطع القعود ومن صلى قاعدا يركع و يسجد لمرض ثم صح بنى على صلوته قائما فإن صلى بعض صلوته بإيماء ثم قدر على الركوع والسجود استأنف الصلاة، ومن أغمي عليه خمس صلوات فما

دونها قضاها إذا صح و إن فاتته بالإغماء أكثر من ذلك لم يقض

If standing is impossible for the sick person, he prays seated with bowing (*rukū‘*) and prostration (*sujūd*). If he is unable to bow and prostrate, then he gestures [to indicate the positions]. He makes the prostration lower than the bowing and does not raise anything towards his face upon which he performs the prostration. If he is unable to sit, then he reclines on his back and points his feet towards the *qiblah* and gestures [indicating] bowing and prostration.

If he lies down on his side with his face towards the *qiblah* making gestures [indicating the postures], it is valid.

If he is unable to make gestures with his head, he postpones his prayer and does not gesture with his eyes, eyebrows nor his heart.

If he is able to stand but unable to bow or prostrate, the standing is not binding upon him and it is permitted [for him] to pray seated whilst gesturing [indicating the postures].

If a healthy person performs a part of his prayer standing, and then is [suddenly] afflicted with an illness, he completes it sitting, and bows and prostrates, or by way of gesturing if he is unable to bow and prostrate, or reclining if he is unable to sit.

Whoever prays [initially] seated, bowing and prostrating, due to an illness, and then recovers [from that illness] completes [the remainder of] his prayer standing, but if he performs a part of his prayer with gestures and then gains the ability to bow and prostrate, he begins the prayer [from the beginning].

When someone who is overcome with unconsciousness for [a period of] five prayers or less recovers, he performs them by way of *qaḍā’*, but if he misses more than that[75] due to unconsciousness, then he does not perform [any of] them by way of *qaḍā’*.[76]

باب سجود التلاوة

THE PROSTRATIONS OF RECITATION

The Qur’ānic Verses (*Āyahs*) of Prostration

في القرآن أربع عشرة سجدة : في آخر الأعراف وفي الرعد وفي
النحل وفي بني إسرآئيل ومريم والأولى في الحج والفرقان والنمل
والٓمٓ تنزيل وص وحم السجدة والنجم والانشقاق والعلق

In the Qur’ān, there are fourteen prostrations [of recitation, and they are in the following *sūrahs*]:

1. The end of *al-A‘rāf,*[77]
2. *Ar-Ra‘d,*[78]
3. *An-Naḥl,*[79]
4. *Banī Isrā’īl* (*al-Isrā’*),[80]
5. *Maryam,*[81]
6. The first [prostration] in *al-Ḥajj,*[82]
7. *Al-Furqān,*[83]
8. *An-Naml,*[84]
9. *Alif Lām Mīm Tanzīl,*[85]
10. *Ṣād,*[86]
11. *Ḥā Mīm as-Sajdah,*[87]
12. *An-Najm,*[88]
13. *Al-Inshiqāq,*[89] and
14. *Al-‘Alaq.*[90]

The Ruling on Prostration

والسجود واجب في هذه المواضع على التالي والسامع سواء قصد
سماع القرآن أولم يقصد وإذا تلا الإمام آية السجدة سجدها
وسجد المأموم معه فإن تلا المأموم لم يلزم الإمام ولا المأموم
السجود، وإن سمعوا وهم في الصلاة آية سجدة من رجل ليس
معهم في الصلاة لم يسجدوها في الصلاة وسجدوها بعد الصلاة،
فإن سجدوها في الصلاة لم تجزئهم ولم تفسد صلاتهم

In these places, prostration is incumbent on the reciter and the listener, whether [the listener] intended to listen to the Qur’ān or did not intend [to listen].

When the imam recites a verse of prostration [within the prayer], he prostrates for it, and the follower prostrates with him, but if the follower recites [a verse of prostration], the prostration is not binding upon the imam or the follower. If they [the imam and follower] hear [the recitation of] a verse of prostration from a man who is not with them in the prayer, they do not prostrate for it within the prayer but prostrate for it after the prayer. If they do prostrate for it within the prayer, it does not suffice them but neither does it invalidate their prayer.

ومن تلا آية سجدة خارج الصلاة ولم يسجدها حتى دخل في الصلاة فتلاها وسجد لها أجزأته السجدة عن التلاوتين و إن تلاها في غير الصلاة فسجدها ثم دخل في الصلاة فتلاها سجدها ثانيا ولم تجزئه السجدة الأولى ومن كرر تلاوة سجدة واحدة في مجلس واحد أجزأته سجدة واحدة

Whoever recites a verse of prostration outside of the prayer and does not prostrate for it until he entered into prayer and recited it [again], and [this time] he does prostrate [once] for both times, the prostration will suffice him for both recitations. If he recites it outside of the prayer and prostrates for it, and then enters into the prayer and recites it [again], he prostrates for it a second time [because] the first prostration does not suffice him.

One prostration suffices someone who repeats the recitation of one [particular verse of] prostration in one session.

ومن أراد السجود كبر ولم يرفع يديه وسجد ثم كبر ورفع رأسه ولا تشهد عليه ولا سلام

Whoever wants [to perform] the prostration [of recitation] pronounces the *takbīr* without raising his hands [to his earlobes], and prostrates. He then says the *takbīr* and raise his head [from prostration]. There is neither *tashahhud*

nor salutation [required] from him.

باب صلاة المسافر

THE PRAYER OF THE TRAVELLER

Shortening (*Qaṣr*) the Prayer

السفر الذي يتغير به الأحكام هو:

أن يقصد الإنسان موضعا بينه وبين المقصد مسيرة ثلاثة أيام
بسير الإبل ومشي الأقدام ولا معتبر في ذلك بالسير في الماء

The journey because of which legal commands change is when one intends [to travel to] a place between him and which there is a distance of three days travel, traversing by camel or walking on foot, but travelling on water[91] is not to be taken into account for that.

وفرض المسافر عندنا : في كل صلاة رباعية ركعتان و لا تجوز
له الزيادة عليهما فإن صلى أربعا وقد قعد في الثانية مقدار التشهد
أجزأته الركعتان عن فرضه وكانت الأخريان له نافلة وإن لم
يقعد في الثانية مقدار التشهد في الركعتين الأوليين بطلت صلاته

According to us, the obligation on the traveller is two units for every prayer of four[92] units,[93] and any addition to those two [units] is not permissible for him.[94] If one does pray four [units] and sits in the second for the extent of the *tashahhud*, then the [first] two units suffice him for his obligatory [units], and the other two are supererogatory for him, but if he does not sit in the second for the extent of the *tashahhud* in the first two units, then his prayer is void.

Beginning the Shortening

ومن خرج مسافرا صلى ركعتين إذا فارق بيوت المصر ولا يزال
على حكم المسافر حتى ينوي الإقامة في بلدة خمسة عشر يوما
فصاعدا فيلزمه الإتمام فإن نوى الإقامة أقل من ذلك لم يتم

Whoever sets out as a traveller performs two units [of prayer] when he has passed the houses [at the fringes] of the city, and he remains under the legal ruling of a traveller until he intends [to take up] residence in a city for fifteen days or more, in which case the completion [of the full prayer] becomes binding upon him, but if he intends [to take up] residence for less than that, he does not complete [the prayer of four units but perform two].

ومن دخل بلدا ولم ينو أن يقيم فيه خمسة عشر يوما و إنما يقول
غدا أخرج أو بعد غد أخرج حتى بقي على ذلك سنين صلى
ركعتين، و إذا دخل العسكر في أرض الحرب فنووا الإقامة خمسة
عشر يوما لم يتموا الصلاة، و إذا دخل المسافر في صلاة المقيم مع
بقاء الوقت أتم الصلاة، و إن دخل معه في فائتة لم تجز صلاته
خلفه، و إذا صلى المسافر بالمقيمين صلى ركعتين و سلم ثم أتم
المقيمون صلاتهم و يستحب له إذا سلم أن يقول : أتموا صلاتكم
فإنا قوم سفر و إذا دخل المسافر مصره أتم الصلاة و إن لم ينو
الإقامة فيه، ومن كان له وطن فانتقل عنه واستوطن غيره ثم سافر
فدخل وطنه الأول لم يتم الصلاة و إذا نوى المسافر أن يقيم بمكة
ومنى خمسة عشر يوما لم يتم الصلاة

Whoever enters a city not intending to stay there for fifteen days [or more], saying, “I shall leave tomorrow,” or “I shall leave [the day] after tomorrow,” even if he remains there for many years [still] prays two units [shortened].

When an army enters *dār al-ḥarb* (hostile territory) and it intends [to take up] residence [there] for fifteen days [or more], it does not complete the [full] prayer.[95]

When the traveller enters into the prayer of a resident [imam] with time

still remaining, he completes the [full] prayer,[96] but if he enters with him into a missed prayer, his prayer is not valid behind him.

When the traveller leads a group of residents in prayer, he prays two units and performs the salutation. Then, the residents complete their prayer [individually]. It is recommended when [the traveller] has performed the salutation, that he say to them, “Complete your prayers for we are a group of travellers.”

When a traveller enters his [own] city, he completes the [full] prayer, even if he has not intended [to take up] residence in it.

Whoever has a homeland then migrates from it and adopts another homeland, then later travels and enters his former homeland, does not complete the prayer[97] [but shortens it].

When a traveller intends to reside in Makkah and Minā for fifteen days [or more], he does not complete the prayer[98] [but shortens it].

والجمع بين الصلوتين للمسافر يجوز فعلا و لا يجوز وقتا، و تجوز الصلوة في سفية قاعدا على كل حال عند أبي حنيفة رحمه الله تعالى و عندهما رحمهما الله تعالى لا تجوز إلا بعذر، ومن فاتته صلاة في السفر قضاها في الحضر ركعتين، ومن فاتته صلاة في الحضر في حال الإقامة قضاها في السفر أربعا، والعاصي والمطيع في السفر في الرخصة سواء

The combination of two prayers for the traveller is permitted practically but not permitted as [far as] time [is concerned].[99]

Prayer is permitted in the sitting position on a boat in all circumstances, according to Abū Ḥanīfah, may Allah have mercy on him, but according to the two of them,[100] may Allah have mercy on them, it is not permitted [in the sitting position] except with a [valid] excuse.

Whoever misses a [four-unit] prayer during a journey, performs it by way of *qaḍā’* as two units when resident, but if he misses a [four-unit] prayer while resident, he performs it by way of *qaḍā’* during travel as four units.[101]

The disobedient and the obedient are [treated] the same with regards to the concession during a journey.

باب صلاة الجمعة

THE *JUMU‘AH* (FRIDAY) PRAYER

The Preconditions for the Validity of the *Jumu‘ah* Prayer

لا تصح الجمعة إلا في مصر جامع أو في مصلى المصر، ولا تجوز في القرى ولا تجوز إقامتها إلا للسلطان أو لمن أمره السلطان

The Jumu‘ah [prayer] is not valid except in a comprehensive city (*miṣr jāmi‘*),[102] or at a [specified] place of prayer within the city, but it is not permitted in villages.

Establishment of the *Jumu‘ah* prayer is not permitted except by the Sulṭān,[103] or by someone whom the Sulṭān has appointed.

Its Preconditions

ومن شرائطها : الوقت فتصح في وقت الظهر ولا تصح بعده، ومن شرائطها الخطبة قبل الصلاة يخطب الإمام خطبتين يفصل

بينهما بقعدة ويخطب قائما على الطهارة فإن اقتصر على ذكر الله تعالى جاز عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: لا بد من ذكر طويل يسمى خطبة فإن خطب قاعدا أو على غير طهارة جاز ويكره ومن شرائطها : الجماعة وأقلهم عند أبي حنيفة و محمد رحمهما الله تعالى ثلاثة سوى الإمام، وقال أبو يوسف رحمه الله تعالى: اثنان سوى الإمام ويجهر الإمام بقراءته في الركعتين وليس فيهما قراءة سورة بعينها

One of its preconditions is the time; it is valid [only] at the time of the

ẓuhr [prayer] and it is not valid after it.[104]

One of its conditions is the address (*khuṭbah*) before the [obligatory] prayer [is held]. The imam delivers two addresses, separating them by one sitting. He delivers the addresses standing in [the state of] purity. If [the imam] confines himself to the remembrance of Allah, it is permitted, according to Abū Ḥanīfah, may Allah have mercy on him, but they[105] said, may Allah have mercy on them, that it must be a lengthy remembrance that may be classified as an address. If he delivers the address whilst seated or in [the state of] impurity, it is valid but disapproved.

One of its conditions is the congregation; according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, the minimum is three [persons] besides the imam, but Abū Yūsuf, may Allah have mercy on him, said that it is two [persons] besides the imam.[106]

The imam is to be audible in his recitation in both *rak'ahs*, and the recitation of a specified chapter in them is not [a requirement].

Those on whom the *Jumu'ah* Prayer is not Obligatory

ولا تجب الجمعة على مسافر ولا امرأة ولا مريض و لا صبي ولا عبد ولا أعمى فإن حضروا وصلوا مع الناس أجزأهم عن فرض الوقت، ويجوز للعبد و المسافر والمريض أن يؤموا في الجمعة

The Jumu'ah [prayer] is not obligatory for:

1. A traveller,
2. A woman,
3. An ill person,
4. A minor,
5. A slave, or
6. A blind person.

If they do attend and pray with the people, it suffices them for the obligatory [prayer] of the time.[107]

It is permissible for a slave, a traveller or an ill person to lead the Friday [prayer as imam].

ومن صلى الظهر في منزله يوم الجمعة قبل صلاة الإمام ولا عذر له كره له ذلك وجازت صلاته فإن بدأ له أن يحضر الجمعة فتوجه إليها بطلت صلاة الظهرعند أبي حنيفة رحمه الله تعالى بالسعي إليها وقال أبو يوسف ومحمد رحمهما الله تعالى : لا تبطل حتى يدخل مع الإمام، ويكره أن يصلي المعذور الظهر بجماعة يوم الجمعة وكذلك أهل السجن

Whoever performs the *ẓuhr* [prayer] in his house on a Friday before the imam’s prayer [of *Jumu‘ah*], without [valid] excuse, that is disapproved for him, but his prayer is permitted. Then if he decides to attend the *Jumu‘ah* [prayer after his performance of the *ẓuhr* prayer] and proceeds towards it, the *ẓuhr* prayer becomes invalid [for him], according to Abū Ḥanīfah, may Allah have mercy on him, by [his] making an effort to go to the *Jumu‘ah* prayer, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that it is not void until he enters [the *Jumu‘ah* prayer] with the imam.

It is disapproved for the [legally] excused person to perform the *ẓuhr* [prayer] in congregation on a Friday, as is the case for prisoners.

ومن أدرك الإمام يوم الجمعة صلى معه ما أدرك وبنى عليها الجمعة و إن أدركه في التشهد أو في سجود السهو بنى عليها الجمعة عند أبي حنيفة وأبي يوسف رحمهما الله تعالى وقال محمد رحمه الله تعالى: إن أدرك معه أكثر الركعة الثانية بنى عليها الجمعة و إن أدرك معه أقلها بنى عليها الظهر

Whoever catches the imam[108] on a Friday prays with him whatever he catches, and prays the *Jumu‘ah* on that basis.[109]

If he catches him in the *tashahhud*, or in the prostration of error (*sujūd as-sahw*), he is to pray the Friday [prayer] on that basis, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them. Muḥammad, may

Allah have mercy on him, said, “If he catches most of the second unit with him, he prays the *Jumu‘ah* [prayer] on that basis, but if he catches less than that with him, he prays the *ẓuhr* [prayer] on that basis.”[110]

The *Khuṭbah* – Address

و إذا خرج الإمام يوم الجمعة ترك الناس الصلاة والكلام حتى يفرغ من خطبته، و قالا رحمهما الله تعالى : لا بأس بأن يتكلم ما لم يبدأ بالخطبة، و إذا أذن المؤذنون يوم الجمعة الأذان الأول ترك

الناس البيع والشراء وتوجهوا إلى الجمعة، فإذا صعد الإمام المنبر جلس وأذن المؤذنون بين يدي المنبرثم يخطب الإمام و إذا فرغ من خطبته أقاموا الصلاة

When the imam comes out [for the Friday prayer], the people abstain from praying and talking until he completes his address. The two of them,[111] may Allah have mercy on them, said, “There is no harm if they talk so long as he has not commenced the address.”

When the *mu’adhdhin* calls the first *adhān* on a Friday, the people stop selling and buying and they proceed towards the *Jumu‘ah* [prayer].

When the imam ascends the *minbar*, he sits [on it] and the *mu’adhdhins* call the *adhān* in front of the *minbar*. Then the imam delivers the address. When he completes his address, they establish the prayer.

باب صلاة العيدين

THE PRAYER OF THE TWO *‘ĪDS*

Recommended Acts of *‘Īd al-Fiṭr*

يستحب في يوم الفطر: أن يطعم الإنسان شيئا قبل الخروج
إلى المصلى ويغتسل ويتطيب و يلبس أحسن ثيابه ويتوجه إلى
المصلى ولا يكبر في طريق المصلى عند أبي حنيفة رحمه الله تعالى و
يكبرعندها رحمهما الله تعالى

It is recommended for the individual to eat something prior to setting forth towards the place of prayer on the day of [*‘Īd*] *al-Fiṭr*, take a *ghusl*, perfume himself, dress [in] his best clothes and head towards the place of prayer (*muṣallā*).[112] He does not say the *takbīr*[113] on the way to the place of prayer, according to Abū Ḥanīfah, may Allah have mercy on him, but according to the two of them,[114] may Allah have mercy on them, he does say the *takbīr*.

ولا يتنفل في المصلى قبل صلاة العيد فإذا حلت الصلاة بارتفاع
الشمس دخل وقتها إلى الزوال فإذا زالت الشمس خرج وقتها

He does not perform supererogatory prayers at the *muṣallā* prior to the *‘Īd* prayer.

When prayer becomes lawful with the ascent of the sun, its time has entered, [and it lasts] up until the declination [of the sun] (*zawāl*)[115] from the meridian. When the sun declines, its time is over.

The *‘Īd* Prayer Procedure

ويصلي الإمام بالناس ركعتين : يكبر في الأولى تكبيرة الإحرام
وثلاثا بعدها ثم يقرأ فاتحة الكتاب وسورة معها ثم يكبر تكبيرة
يركع بها ثم يبتدئ في الركعة الثانية بالقراءة فإذا فرغ من القراءة
كبر ثلاث تكبيرات وكبر تكبيرة رابعة يركع بها ويرفع يديه في
تكبيرات العيدين ثم يخطب بعد الصلاة خطبتين يعلم الناس فيها
صدقة الفطر وأحكامها

The imam prays two units with the people; in the first [unit] he

pronounces the consecratory *takbīr*, then three [*takbīrs*] after that. After that, he recites the Fātiḥah of the Book and a *sūrah* with it. He then says the *takbīr* with which he bows. Then, in the second unit, he begins with the recitation [of the Fātiḥah]. When he has completed the recitation [with the additional chapter after the Fātiḥah], he says three *takbīrs* and [then] says a fourth *takbīr* with which he bows.

He raises his hands [to his ears] in [all of] the *takbīrs* of both the *ʿĪd* [prayers].

Thereafter, [the imam] delivers two addresses after the prayer in which he teaches the people [regarding] the *ṣadaqat al-fiṭr* (the mandatory charity of the *fiṭr*) and its rules.

ومن فاتته صلاة العيد مع الإمام لم يقضها، فإن غم الهلال على الناس وشهدوا عند الإمام برؤية الهلال بعد الزوال صلى العيد من الغد فإن حدث عذر منع الناس من الصلاة في اليوم الثاني لم يصلها بعده

Whoever misses the *ʿĪd* prayer with the imam, is not to perform it by way of *qaḍāʾ*.

If the crescent moon is obscured for people and they testify to the sighting of the crescent in the presence of the imam after the declination [of the sun from the meridian], they pray [the *ʿĪd* prayer] the following day, but if a [valid] excuse occurs that hinders people from praying the second day, [the imam] does not perform it after that.

Recommended Acts of *ʿĪd al-Aḍḥā*

ويستحب في يوم الأضحى: أن يغتسل ويتطيب ويؤخر الأكل حتى يفرغ من الصلاة ويتوجه إلى المصلى وهو يكبر، ويصلي الأضحى ركعتين كصلاة الفطر ويخطب بعدها خطبتين يعلم الناس فيها الأضحية وتكبيرات التشريق فإن حدث عذر منع

الناس من الصلاة يوم الأضحى صلاها من الغد وبعد الغد ولا
يصليها بعد ذلك

On the day of [the *‘Īd* of] *Aḍḥā*, it is recommended that one take a *ghusl*, wear perfume, delay eating until one has finished the prayer and head towards the place of prayer saying the *takbīr*.

One performs the [*‘Īd* of] *Aḍḥā* [prayer in] two *rak‘ahs*, like the [*‘Īd* of] *Fiṭr* prayer.

[The imam] delivers two addresses after [the prayer], teaching people the sacrifice (*uḍḥiyah*) and the *takbīrs* of *tashrīq*[116] in them.

If there occurs a [valid] excuse that hinders people from praying on the day [of *‘Īd* of] *Aḍḥā*, they pray it the following day or the day after that, but they do not pray it after that.

The Takbīr at-Tashrīq

تكبير التشريق أوله عقيب صلاة الفجر من يوم عرفة وآخره
عقيب صلاة العصر من النحر عند أبي حنيفة، وقال أبو يوسف
ومحمد: إلى صلاة العصر من آخر أيام التشريق، والتكبير عقيب
الصلوات المفروضات وهو أن يقول: الله أكبر الله أكبر لا إله
إلا الله والله أكبر الله أكبر ولله الحمد

As to the *takbīr at-tashrīq*, the first of it follows the *fajr* prayer on the Day of ‘Arafah and the last of it follows the *‘aṣr* prayer on the Day of Sacrifice (*naḥr*), according to Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that [it lasts] till the *‘aṣr* prayer of the final day of the *tashrīq*.

The *takbīr* follows [immediately after] the obligatory prayers. [It is to say]: *“Allāhu akbar, Allāhu akbar, lā ilāha illa’llāhu wa’llāhu akbar, Allāhu akbar, wa li’llāhi’l-ḥamd* – Allah is greater, Allah is greater, there is no god but Allah, Allah is greater, Allah is greater, and to Allah is all praise.”

باب صلاة الكسوف

PRAYER DURING THE SOLAR ECLIPSE (*KUSŪF*)

إذا انكسفت الشمس صلى الإمام بالناس ركعتين كهيئة النافلة في كل ركعة ركوع واحد ويطول القراءة فيهما ويخفي عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى : يجهر ثم يدعو بعدها حتى تنجلي الشمس

When the sun is eclipsed (*kusūf*), the imam prays two *rak'ahs* with the people, like the form of the supererogatory [prayers]. There is [only] one bowing [position] in each *rak'ah*. The imam lengthens the recitation in both [of the *rak'ahs*] and he makes [the recitation] inaudible, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he recites aloud. Afterwards, he makes a supplication until the sun appears again.

ويصلي بالناس الإمام الذي يصلي بهم الجمعة فإن لم يحضر الإمام صلاها الناس فرادى، وليس في خسوف القمر جماعة وإنما يصلي كل واحد بنفسه، وليس في الكسوف خطبة

The imam who performs the *Jumu'ah* prayer with them prays with the people, and if the imam is not present, the people pray it individually.

There is no congregation for the lunar eclipse (*khusūf*), and everyone prays on their own.

There is no address (*khuṭbah*) for the eclipse prayer.

باب صلاة الاستسقاء

THE *ISTISQĀ'* – PRAYER FOR RAIN

قال أبو حنيفة رحمه الله تعالى: ليس في الاستسقاء صلاة مسنونة

بالجماعة فإن صلى الناس وحدانا جاز و إنما الاستسقاء الدعاء
والاستغفار، وقال أبو يوسف و محمد رحمهما الله تعالى : يصلي
الإمام ركعتين يجهر فيهما بالقراءة ثم يخطب و يستقبل القبلة
بالدعاء و يقلب الإمام رداءه ولا يقلب القوم أرديتهم ولا يحضر
أهل الذمة للاستسقاء

Abū Ḥanīfah, may Allah have mercy on him, said, "For seeking rain (*istisqā'*), there is no prayer in congregation according to the Sunnah; and if people pray individually it is valid. *Istisqā'* is only supplication and seeking forgiveness."

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said, "The imam prays two units in which he makes the recitation audible. Then, he delivers an address and faces the *qiblah* when supplicating. The imam turns his cloak inside out, but the people do not turn their cloaks inside out."

The people of the *dhimmah*[117] do not attend the [prayer for] seeking rain.

باب قيام شهر رمضان

THE (NIGHT) PRAYER DURING THE MONTH OF RAMADAN

يستحب أن يجتمع الناس في شهر رمضان بعد العشاء

It is recommended[118] for people to congregate in the month of Ramadan, after the *'ishā'* [prayer].

The *Tarāwīḥ* Prayer

فيصلي بهم إمامهم خمس ترويحات في كل ترويحة تسليمتان
ويجلس بين كل ترويحتين مقدار ترويحة ثم يوتر بهم ولا يصلي
الوتر بجماعة في غير شهر رمضان

Their imam prays five *tarwīḥahs*[119] with them, in each *tarwīḥah* there are two salutations. He sits between every two *tarwīḥahs* to the extent of one *tarwīḥah*.[120] Then, he performs the *witr* prayer with them.[121] The *witr* prayer is not to be performed in congregation outside the month of Ramadan.

باب صلاة الخوف

THE PRAYER IN THE STATE OF FEAR

إذا اشتد الخوف جعل الإمام الناس طائفتين:

طائفة إلى وجه العدو وطائفة خلفه فيصلي بهذه الطائفة ركعة وسجدتين فإذا رفع رأسه من السجدة الثانية مضت هذه الطائفة إلى وجه العدو وجاءت تلك الطائفة فيصلي بهم الإمام ركعة وسجدتين وتشهد وسلم ولم يسلموا وذهبوا إلى وجه العدو

وجاءت الطائفة الأولى فصلوا وحدانا ركعة وسجدتين بغير قراءة وتشهدوا وسلموا ومضوا إلى وجه العدو وجاءت الطائفة الأخرى وصلوا ركعة وسجدتين بقراءة وتشهدوا وسلموا

When fear becomes intense,[122] the imam forms the people into two groups; one group facing the enemy,[123] and one group behind himself.[124] He prays one unit and two prostrations with this [latter] group. When he raises his head from the second prostration, this group proceeds to face the enemy and the other group attends. The imam performs one unit and two prostrations with [the second group] and he performs the *tashahhud* and the salutation. They do not perform the salutation but go away to face the enemy. The first group returns and prays one unit and two prostrations, without the recitation,[125] individually. They perform the *tashahhud* and the salutation [then] proceed to face the enemy. [Then,] the other group return and pray one unit[126] and two prostrations with recitation[127] and perform the *tashahhud* and the salutation.

فإن كان مقيما صلى بالطائفة الأولى ركعتين وبالثانية ركعتين
ويصلي بالطائفة الأولى ركعتين من المغرب وبالثانية ركعة، ولا
يقاتلون في حال الصلاة فإن فعلوا ذلك بطلت صلاتهم وإن اشتد
الخوف صلوا ركبانا وحدانا يومئون بالركوع والسجود إلى أي
جهة شاءوا إذا لم يقدروا على التوجه إلى القبلة

If [the imam] is resident, then he performs two units with the first group and two units with the second [group].

For the *maghrib* [prayer], he prays two units with the first group and one unit with the second [group].

They do not engage in combat whilst in the state of prayer; if they do that, their prayer is void.

If the fear is extremely intense, they pray individually whilst mounted, making gestures for the bowing and prostration, facing whichever direction they wish if they are unable to face the *qiblah* [throughout the prayer].

باب الجنائز

FUNERALS

إذا احتضر الرجل وجه إلى القبلة على شقه الأيمن ولقن الشهادتين
وإذا مات شدوا لحيتيه وغمضوا عينيه

When a person is close to death, he is faced towards the *qiblah* on his right side and encouraged [to pronounce] the two *shahādahs*.[128] When he dies, they tie his jaws and close his eyes.

Bathing the Corpse

فإذا أرادوا غسله وضعوه على سرير وجعلوا على عورته خرقة، ونزعوا ثيابه ووضأوه ولا يمضمض ولا يستنشق ثم يفيضون الماء عليه ويجمر سريره وترا ويغلى الماء بالسدر أو بالحرض فإن لم يكن فالماء القراح ويغسل رأسه ولحيته بالخطمى

When they decide to bathe him, they place him on a dais and place a piece of cloth over his private parts (*‘awrah*) and remove his clothes. They perform *wuḍū’* on him, but do not rinse his mouth nor rinse his nose. Then, they pour water over him. His dais has incense burned under it an odd number of times. The water [for *ghusl*] is boiled with lotus or with saltwort, and if not available, then pure water [suffices]. His head and beard are washed with althaea.[129]

ثم يضجع على شقه الأيسر فيغسل بالماء والسدر حتى يرى أن الماء قد وصل إلى ما يلي التحت منه ثم يضجع على شقه الأيمن فيغسل بالماء حتى يرى أن الماء قد وصل إلى ما يلي التحت منه، ثم يجلسه ويسنده إليه ويمسح بطنه مسحا رقيقا فإن خرج منه شيء غسله ولا يعيد غسله، ثم ينشفه في ثوب ويدرج في أكفانه ويجعل الحنوط على رأسه ولحيته والكافور على مساجده

Then, he is made to lie on his left side and bathed with water and lotus until it is seen that the water has reached to what is adjacent to the tablet.[130] After that, he shall be made to lie on his right side and bathed with water until it is seen that the water has reached to what is adjacent to the tablet. Then, [the person bathing the body] causes him to sit, supports him against himself and gently rubs his stomach, and if anything emerges from him, washes it. He does not repeat the *ghusl* [of the deceased].

Then, he dries him with a cloth and places him in his shrouds. He applies balm to his head and beard, and camphor to the parts used in prostration.[131]

The Shroud

والسنة أن يكفن الرجل في ثلاثة أثواب: إزار وقميص ولفافة
فإن اقتصروا على ثوبين جاز، و إذا أرادوا لف اللفافة عليه ابتدأوا
بالجانب الأيسر فألقوه عليه ثم بالأيمن فإن خافوا أن ينتشر الكفن
عنه عقدوه

Of the Male

It is sunnah for a man to be shrouded in three cloths:

1. A wrapper for the lower half of the body (*izār*),[132]
2. Shirt (*qamīṣ*), and
3. Wrapper (*lifāfah*).

If they confine themselves to two cloths, it is valid.[133]

When they decide to wrap the wrapper around him, they begin from the left side and cast it over him, then with the right side. If they are afraid that the shroud will unwrap [and fall] off him, they tie it.

وتكفن المرأة في خمسة أثواب : إزار وقميص وخمار وخرقة تربط
بها ثدياها ولفافة فإن اقتصروا على ثلاثة أثواب جاز ويكون
الخمار فوق القميص تحت اللفافة، ويجعل شعرها على صدرها

Of the Female

The woman is enshrouded in five cloths:

1. A wrapper for the lower half of the body (*izār*),
2. Shirt (*qamīṣ*),
3. Veil (*khimār*),
4. A scrap (*khirqah*) – with which her breasts are tied,[134] and
5. A wrapper (*lifāfah*).

If they confine themselves to three cloths, it is valid.[135]

The veil is over the shirt but under the wrapper, and her hair is placed upon her chest.

ولا يسرح شعر الميت ولا لحيته ولا يقص ظفره ولا يقص شعره
وتجمر الأكفان قبل أن يدرج فيها وترا، فإذا فرغوا منه صلوا عليه

The hair of the deceased is not combed nor his beard. His nails are not trimmed nor his hair. The shrouds are subjected to incense an odd number of times before the body is placed in them. Once they have completed that, they pray over him.

The Funeral Prayer

وأولى الناس بالصلاة عليه السلطان إن حضر فإن لم يحضر فيستحب تقديم إمام الحي ثم الولي، فإن صلى عليه غير الولي والسلطان أعاد الولي و إن صلى عليه الولي لم يجز أن يصلي أحد بعده فإن دفن ولم يصل عليه صلي على قبره إلى ثلاثة أيام و لا يصلى بعد ذلك، و يقوم المصلي بحذاء صدر الميت

The one with the most right to lead the prayer over him is the Sulṭān, if he is present. If he is not present, then it is recommended to give priority to the imam of the locality, then the *walī* (legally responsible guardian). If someone other than the *walī* or the Sulṭān pray over him, the *walī* repeats [the prayer]. If the *walī* prays over him, then no-one is permitted to pray over him after that.[136] If he is buried and he has not yet been prayed over, his grave may be prayed over for [up to] three days, and it is not prayed [over] after that.[137]

The person praying stands level with the chest of the deceased.[138]

والصلاة : أن يكبر تكبيرة يحمد الله تعالى عقيبها ثم يكبر تكبيرة

و يصلي على النبي صلى الله عليه وسلم ثم يكبر تكبيرة ثالثة يدعو فيها لنفسه وللميت وللمسلمين ثم يكبر تكبيرة رابعة و يسلم ولا يرفع يديه إلا في التكبيرة الأولى، ولا يصلى على ميت في مسجد جماعة

The [funeral] prayer is [as follows]:

1. One says the *takbīr*, praising Allah ﷻ after it, then
2. One says the [second] *takbīr* and sends blessings on the Prophet ﷺ thereafter

3. He says the third *takbīr* and supplicates in it for himself, the deceased and the Muslims, and then
4. One says a fourth *takbīr* and says the salutation.
5. One is not to raise his hands [to his ears] except in the first *takbīr*. The deceased is not prayed over in a congregational *masjid*.

Carrying the Bier

فإذا حملوه على سريره أخذوا بقوائمه الأربع ويمشون به مسرعين
دون الخبب فإذا بلغوا إلى قبره كره للناس أن يجلسوا قبل أن يوضع
من أعناق الرجال ويحفر القبر ويلحد ويدخل الميت مما يلي القبلة

When they [i.e. the pallbearers] carry him on his dais, they hold it by its four posts. They walk with it briskly, but less than trotting. It is disapproved for the people, when they reach his grave, to sit before he is lowered down from the necks of the men.[139]

His grave is dug and a lateral niche (*laḥd*) is made[140] and the deceased is entered from that [side] which is adjacent to the *qiblah*.

The Burial

فإذا وضع في لحده قال الذي يضعه : بسم الله وعلى ملة رسول

الله ويوجهه إلى القبلة ويحل العقدة ويسوي اللبن على اللحد
ويكره الآجر والخشب ولا بأس بالقصب ثم يهال التراب عليه
ويسنم القبر ولا يسطح

When he is placed in his niche, the one placing him is to say, “*bismi’llāhi wa ‘alāmillatirasūli’llāhi* – In the name of Allah, and according to the religion of the Messenger of Allah.” He is [also] to face him towards the *qiblah* and to loosen the knot [of his wrapper]. Mud bricks are placed over

the niche; [the placing of] baked bricks and wood [over the niche] is disapproved, but there is no harm in [using] cane. Thereafter, earth is cast onto [the grave] and the grave is made hump-like and not flattened.[141]

The Stillborn

ومن استهل بعد الولادة سمي وغسل وصلي عليه وإن لم يستهل
أدرج في خرقة ودفن ولم يصل عليه

After birth, whoever cries, is named, given a *ghusl* and prayed over,[142] but if it does not cry, it is [not named, given a *ghusl* nor prayed over, but] is wrapped in a cloth and buried.

باب الشهيد

THE *SHAHĪD* – MARTYR[143]

الشهيد: من قتله المشركون، أو وجد في المعركة وبه أثر الجراحة،
أو قتله المسلمون ظلما ولم يجب بقتله دية فيكفن ويصلي عليه

ولا يغسل وإذا استشهد الجنب غسل عند أبي حنيفة رحمه الله
تعالى وكذلك الصبي، وقال أبو يوسف ومحمد رحمهما الله تعالى:
لا يغسلان ولا يغسل عن الشهيد دمه ولا ينزع عنه ثيابه وينزع
عنه الفرو والحشو والخف والسلاح

The *shahīd* (martyr) is someone:

1. Who was killed by polytheists,[144] or
2. Was found [dead] at the battle with marks of wounding on him, or
3. The Muslims killed him unjustly but *diyah* is not due for his killing.

He is placed in a shroud and prayed over, but not given a *ghusl*.

When *a junub* is killed [as *shahīd*], he is given a *ghusl*, according to Abū Ḥanīfah, may Allah have mercy on him, as is the minor, but Abū Yūsuf and

Muḥammad, may Allah have mercy on them, said, “They are not given a *ghusl*.”

The blood of a *shahīd* is not washed off him, nor are his clothes removed, but his leather jacket, furs, boots and weapons are removed.

ومن ارتث غسل والارتثات : أن يأكل أو يشرب أو يداوى أو يبقى حيا حتى يمضي عليه وقت صلاة وهو يعقل أو ينقل من المعركة حيا، ومن قتل في حد أو قصاص غسل وصلي عليه، ومن قتل من البغاة أو قطاع الطريق لم يصل عليه

Whoever remains alive (*irtithāth*) is to be given a *ghusl*.

Remaining alive (*irtithāth*) is that one:

1. Eats, or
2. Drinks, or
3. Is treated, or
4. Remains alive until the time of one prayer passes over him and whilst he is conscious, or
5. He is transferred, while alive, from the battlefeld.

Whoever is killed due to a *ḥadd* (divine statutory) punishment, or *qiṣāṣ* (legally supervised retaliation), is given a *ghusl* and prayed over, but those rebels or brigands killed are not prayed over.

باب الصلاة في الكعبة

PRAYER INSIDE THE KA‘BAH

الصلاة في الكعبة جائزة فرضها ونفلها، فإن صلى الإمام فيها بجماعة فجعل بعضهم ظهره إلى ظهر الإمام جاز ومن جعل منهم وجهه إلى وجه الإمام جاز و يكره ومن جعل منهم ظهره إلى وجه الإمام لم تجز صلاته

Prayer inside the Ka‘bah is valid, the obligatory and the supererogatory. If the imam prays inside it with a congregation and some of them turn their

backs to the imam’s back, it is valid, but if any of them turns his face towards the face of the imam, it is valid, but disapproved, but if any of them turns his back to the face of the imam, his prayer is invalid.

و إذا صلى الإمام في المسجد الحرام تحلق الناس حول الكعبة
وصلوا بصلاة الإمام فمن كان منهم أقرب إلى الكعبة من الإمام
جازت صلاته إذا لم يكن في جانب الإمام، ومن صلى على ظهر
الكعبة جازت صلاته

When the imam prays in the *al-Masjid al-Ḥarām*,[145] the people form a circle around the Ka‘bah and pray with the imam’s prayer [following him]. If any of them is closer to the Ka‘bah than the imam, his prayer is valid if he is not on the [same] side [as that] of the imam.

If someone prays on the roof of the Ka‘bah, his prayer is valid.

كتاب الزكاة

ZAKĀH – OBLIGATORY POOR-DUE

Obligations of *Zakāh*

الزكاة: واجبة على الحر المسلم البالغ العاقل إذا ملك نصابا كاملا ملكا تاما وحال عليه الحول وليس على صبي ولا مجنون ولا مكاتب زكاة، ومن كان عليه دين محيط بماله فلا زكاة عليه، وإن كان ماله أكثر من الدين زكى الفاضل إذا بلغ نصابا، وليس في دور السكنى وثياب البدن وأثاث المنزل ودواب الركوب وعبيد الخدمة وسلاح الاستعمال زكاة، ولا يجوز أداء الزكاة إلا بنية مقارنة للأداء أو مقارنة لعزل مقدار الواجب، ومن تصدق بجميع ماله ولا ينوى الزكاة سقط فرضها عنه

Zakāh is obligatory on the free Muslim [who is] adult and sane when he owns the complete minimum amount (*niṣāb*), with complete ownership[146] and a [lunar] year passes over it. There is no *zakāh* on a minor, an insane person or a *mukātab*.[147]

Whoever owes a debt that encompasses his wealth, then there is no *zakāh* [due] from him, but if his wealth is more than the debt, *zakāh* is paid upon the excess if it reaches the *niṣāb*.

There is no *zakāh* on residential houses, clothes for the body, household goods, riding animals, slaves for [personal] service [not for trade] and weapons for use [not for trade].

Payment of *zakāh* is not valid without an associated intention to pay, or associated [intention] for the disposal of the obligation of the amount [of the *zakāh*].

Whoever gives away all his wealth as *ṣadaqah* (optional charity) and does not intend *zakāh*, his obligation [of the payment of *zakāh*] lapses.

باب زكاة الإبل

ZAKĀH ON CAMELS (*IBIL*)

ليس في أقل من خمس ذود من الإبل صدقة، فإذا بلغت خمسا سائمة وحال عليها الحول ففيها شاة إلى تسع، فإذا كانت عشرا ففيها شاتان إلى أربع عشرة، فإذا كانت خمس عشرة، ففيها ثلاث شياه إلى تسع عشرة، فإذا كانت عشرين ففيها أربع شياه إلى أربع وعشرين، فإذا بلغت خمسا وعشرين ففيها بنت مخاض إلى خمس وثلاثين، فإذا بلغت ستا وثلاثين، ففيها بنت لبون إلى خمس وأربعين، فإذا بلغت ستا وأربعين ففيها حقة إلى ستين، فإذا بلغت إحدى وستين ففيها جذعة إلى خمس وسبعين، فإذا بلغت ستا وسبعين ففيها بنتا لبون إلى تسعين، و إذا كانت إحدى وتسعين ففيها حقتان إلى مائة وعشرين

There is no *ṣadaqah*[148] [due] on less than a group[149] of five camels. When they amount to five free-grazing, and a year passes over them, there is one sheep or goat[150] due [in *zakāh*] for them; [that is] up to nine [camels]. When they become ten, there are two sheep or goats due [in *zakāh*] for them, and that is up to fourteen [camels]. When they become fifteen [camels], there are three sheep or goats [*zakāh*] in them, up till nineteen. When they become twenty, there are four sheep or goats due [in *zakāh*] for them, up till twenty-four.

When they reach twenty-five [camels], there is one *bint makhāḍ*[151] due [in *zakāh*] for them, up till thirty-five. When they reach thirty-six [camels], there is one *bint labūn*[152] due [in *zakāh*] for them, up till forty-five. When they reach forty-six [camels], there is one *ḥiqqah*[153] due [in *zakāh*] for them, till sixty. When they reach sixty-one [camels], there is one *jadha'ah*[154] due [in *zakāh*] for them, up till seventy-five.

When they reach seventy-six [camels], there are two *bint labūns* due [in *zakāh*] for them, up till ninety. When they become ninety-one [camels], there are two *ḥiqqahs* due [in *zakāh*] for them, up till one hundred and twenty [camels].

ثم تستأنف الفريضة فيكون في الخمس شاة مع الحقتين وفى العشر شاتان وفى خمس عشرة ثلاث شياه وفى عشرين أربع شياه وفى خمس وعشرين بنت مخاض إلى مائة وخمسين فيكون فيها ثلاث حقاق

Thereafter, the obligation recommences; thus, for five [camels over one hundred and twenty], there is one sheep or goat with the two *ḥiqqahs*. For ten [camels over one hundred and twenty], there are two sheep or goats [with the two *ḥiqqahs*]. For fifteen [camels over one hundred and twenty], there are three sheep or goats [with the two *ḥiqqahs*]. For twenty [camels over one hundred and twenty], there are four sheep or goats [with the two *ḥiqqahs*].

For twenty-five [camels over one hundred and twenty], there is one *bint makhāḍ* [with the two *ḥiqqahs*], up to one hundred and fifty in which there are three *ḥiqqahs* [due in *zakāh*].

ثم تستأنف الفريضة فيكون في الخمس شاة وفي العشر شاتان وفي خمس عشرة ثلاث شياه وفي عشرين أربع شياه وفي خمس وعشرين بنت مخاض وفي ست وثلاثين بنت لبون, فإذا بلغت مائة وستا وتسعين ففيها أربع حقاق إلى مائتين

Thereafter, the obligation recommences; thus, for five [camels over one hundred and fifty], there is one sheep or goat [with the three *ḥiqqahs*]. For ten, there are two sheep or goats. For fifteen, there are three sheep or goats. For twenty, there are four sheep or goats.

For twenty-five [camels over one hundred and fifty], there is one *bint makhāḍ* [with the three *ḥiqqahs*]. For thirty-six [camels over one hundred and fifty], there is one *bint labūn* [with the three *ḥiqqahs*].

When they reach [the number] one hundred and ninety-six, then in them there are four *ḥiqqahs*, up until two hundred [camels].

ثم تستأنف الفريضة أبدا كما تستأنف في الخمسين التي بعد المائة والخمسين، والبخت والعراب سواء

Thereafter, the obligation continually recommences, just as it recommences for the fifty which come after the one hundred and fifty.[155]

The mixed breed (*bukht*) and the Arabian breed (*‘irāb*) are [deemed to be] the same.

باب صدقة البقر

ZAKĀH ON BOVINES[156] (*BAQAR*)

ليس في أقل من ثلاثين من البقر صدقة، فإذا كانت ثلاثين سائمة وحال عليها الحول ففيها تبيع أو تبيعة، وفي أربعين مسن أو مسنة

There is no *zakāh* on less than thirty cows. When there are thirty, free-grazing [cows] and a year passes over them, there is due a one-year old male calf (*tabī*‘) or a one-year old female calf (*tabī‘ah*) [as *zakāh*] in them, and in forty [cows], it is a two-year old male calf (*musinn*) or a two-year old female calf (*musinnah).*

فإذا زادت على الأربعين وجب في الزيادة بقدر ذلك إلى ستين عند أبي حنيفة رحمه الله تعالى ففي الواحدة ربع عشر مسنة وفي الاثنين نصف عشر مسنة وفي الثلاث ثلاثة أرباع عشر مسنة

When they exceed forty [cows] up to sixty, it becomes obligatory [to pay *zakāh*] on the excess accordingly, according to Abū Ḥanīfah, may Allah have mercy on him. Thus, in one [cow over forty cows], it is a quarter of a tenth[157] of a two-year old female calf, in two [cows over forty cows], it is one half of a tenth[158] of a two-year old female calf and in three, it is three-quarters of a tenth[159] of a two-year old female calf.

وقال أبو يوسف و محمد رحمهما الله تعالى : لا شيء في الزيادة حتى تبلغ ستين فيكون فيها تبيعان أو تبيعتان وفي سبعين مسنة وتبيع وفي ثمانين مسنتان وفي تسعين ثلاثة أتبعة وفي مائة تبيعتان ومسنة

Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that there is nothing [to pay] for the excess [over forty cows] until they reach sixty. Thus, there are two one-year old male calves or two one-year old female calves [in sixty cows]. In seventy [cows], there is a two-year old female calf and a one-year old male calf. For eighty [cows], there are two two-year old male calves. For ninety [cows], there are three one-year old female calves and in one hundred [cows], there are two one-year old female calves and one two-year old female calf.

و على هذا يتغير الفرض في كل عشر من تبيع إلى مسنة،
والجواميس والبقر سواء

It is on this [scale that] the obligation [of *zakāh*] changes in every ten [cows] from a year old male calf to a two-year old female calf [and vice versa].[160]

Buffaloes and cows are the same [in this regard].

باب صدقة الغنم

ZAKĀH ON SHEEP AND GOATS [161] (*GHANAM*)

ليس في أقل من أربعين شاة صدقة، فإذا كانت أربعين شاة سائمة وحال عليها الحول ففيها شاة إلى مائة وعشرين، فإذا زادت واحدة ففيها شاتان إلى مائتين، فإذا زادت واحدة ففيها ثلاث شياه، فإذا بلغت أربع مائة ففيها أربع شياه، ثم في كل مائة شاة، والضأن والمعز سواء

There is no *zakāh* due on less than forty sheep or goats, and when there are forty free-grazing [sheep or goats] and a year passes over them, there is one sheep or goat due from them, up until one hundred and twenty.

When one [sheep or goat] increases [over one hundred and twenty], then there are two sheep or goats [due as *zakāh*] from them, up until two hundred. When one [sheep or goat] increases [over two hundred], then there are three sheep or goats [due as *zakāh*] from them. When they reach four hundred [sheep or goats], then there are four sheep or goats [due as *zakāh*] from them.

Thereafter, in every [additional] one hundred [sheep or goats over four hundred], there is a sheep or goat [added to the payment of *zakāh*].[162]

Sheep and goats are [to be deemed] the same [in this regard].

باب زكاة الخيل

ZAKĀH ON HORSES (*KHAYL*)

إذا كانت الخيل سائمة ذكورا و إناثا وحال عليها الحول فصاحبها بالخيار: إن شاء أعطى من كل فرس دينارا و إن شاء قومها فأعطى عن كل مائتي درهم خمسة دراهم، وليس في ذكورها منفردة زكاة عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف و محمد رحمهما الله تعالى: لا زكاة في الخيل، ولا شيء في البغال والحمير إلا أن تكون للتجارة

When horses are free-grazing, male (stallions) and female (mares), and one year passes over them, then their owner has a choice:

1. If he wants, he may give one dinar for every horse [as *zakāh*], or
2. If he wishes, he may value them and pay five dirhams for every two hundred dirhams [of the total value].[163]

According to Abū Ḥanīfah, may Allah have mercy on him, there is no *zakāh* on the males of them alone,[164] but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that there is no *zakāh* on horses.

There is nothing [payable as *zakāh*] on mules and donkeys unless they are for trade.

وليس في الفصلان والحملان والعجاجيل زكوة عند أبي حنيفة ومحمد رحمهما الله تعالى إلا أن يكون معها كبار، وقال أبو يوسف رحمه الله تعالى تجب فيها واحدة منها، ومن وجب عليه مسن فلم يوجد أخذ المصدق أعلى منها ورد الفضل أو أخذ دونها وأخذ الفضل، ويجوز دفع القيم في الزكاة

According to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, there is no *zakāh* on young camels, young sheep and young cattle, unless there are older ones with them, but Abū Yūsuf, may Allah have mercy on him, said that it is obligatory [to give] one of those [young].

Upon whomsoever a two-year old male calf is obligatory and it is not available, the *ṣadaqah*-official is to take a superior [animal] than that and return the excess[165] [to the owner], or he may take an inferior [animal than that] and take the excess.

It is permitted to pay the value in *zakāh*.[166]

وليس في العوامل و الحوامل والعلوفة زكوة، ولا يأخذ المصدق خيار المال ولا رذالته و يأخذ الوسط، ومن كان له نصاب فاستفاد في أثناء الحول من جنسه ضمه إلى ماله وزكاه به، والسائمة هي : التي تكتفي بالرعي في أكثر الحول فإن علفها نصف الحول أو أكثر فلا زكاة فيها

There is no *zakāh* on work-animals, pack-animals and stall-fed animals.

The *ṣadaqah*-official[167] is not to take the best of the wealth [of animals] nor the worst of it; he is to take the average [animals].

Whoever possesses the *niṣāb* [of animals] and derives benefit from the same species throughout the year, is to add it to his wealth [of animals] and pay *zakāh* on it [all].

The *sā'imah* is that [animal] which is sufficed by grazing most of the year. When one stall-feeds it for half the year or more, there is no *zakāh* on it.[168]

والزكاة عند أبي حنيفة و أبي يوسف رحمهما الله تعالى في النصاب دون العفو، وقال محمد وزفر رحمهما الله تعالى: تجب فيهما، و إذا هلك المال بعد وجوب الزكاة سقطت، و إن قدم الزكاة على الحول وهو مالك للنصاب جاز

According to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, *zakāh* is due on the [complete] *niṣāb* [only] and not [on] the excess, but Muḥammad and Zufar, may Allah have mercy on them, said that it is obligatory on them both.

If *zakāh* is paid in advance before the year [has passed], and one is the owner of the *niṣāb*, then it is valid.

ZAKĀH ON PROPERTY (*MĀL*)

باب زكاة الفضة

ZAKĀH ON SILVER (*FIḌḌAH*)

ليس في ما دون مائتي درهم صدقة، فإذا كانت مائتي درهم
وحال عليها الحول ففيها خمسة دراهم ولا شيء في الزيادة حتى
تبلغ أربعين درهما فيكون فيها درهم، ثم في كل أربعين درهما
درهم عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد
رحمهما الله تعالى: ما زاد على المائتين فزكاته بحسابه

There is no *zakāh* on whatever is less than two hundred dirhams [of silver].[169]

When there are two hundred dirhams [of silver] and a year passes over them, then for that there are five dirhams[170] [*zakāh*], and there is nothing [to pay] on the excess until it reaches forty dirhams, when, there is one dirham for it.

Thereafter, there is one dirham [to pay as *zakāh*] in every forty dirhams, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that whatever goes over two hundred [dirhams], its *zakāh* [is calculated] according to its rate.[171]

وإن كان الغالب على الورق الفضة فهو في حكم الفضة، وإذا
كان الغالب عليه الغش فهو في حكم العروض ويعتبر أن تبلغ
قيمتها نصابا

If the predominant portion of the coin is silver, then it shall be [dealt with] under the ruling of silver, but if the predominant portion is alloy, then it shall be [dealt with] under the ruling of commodities (*ʻurūḍ)*.

باب زكاة الذهب

ZAKĀH ON GOLD (*DHAHAB*)

ليس في ما دون عشرين مثقالا من الذهب صدقة، فإذا كانت
عشرين مثقالا وحال عليها الحول ففيها نصف مثقال، ثم في كل
أربعة مثاقيل قيراطان

There is no *zakāh* on what is less than twenty *mithqāls*[172] of gold, but if it is [a minimum of] twenty *mithqāls*, and one year passes over it, there is one-half of a *mithqāl* [*zakāh*] due on it.[173]

Thereafter, in every four *mithqāls* [over twenty], two carats[174] [are due as *zakāh*].[175]

وليس فيما دون أربعة مثاقيل صدقة عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: ما زاد على العشرين فزكوته بحسابه، وفي تبر الذهب والفضة وحليهما والآنية منهما الزكاة

According to Abū Ḥanīfah, may Allah have mercy on him, there is no *zakāh* due on what is less than four *mithqāls*,[176] but they,[177] may Allah have mercy on them, said that whatever exceeds twenty [*mithqāls*], its *zakāh* [is calculated] according to its rate.[178]

Zakāh is due on nuggets of gold and silver, on their jewellery and utensils [manufactured] from them.

باب زكاة العروض

ZAKĀH ON STOCK (*'URŪD*)

الزكاة واجبة في عروض التجارة كائنة ما كانت إذا بلغت قميتها نصابا من الورق أو الذهب يقومها بما هو أنفع للفقراء والمساكين منهما، و قال أبو يوسف رحمه الله تعالى: يقوم مما اشتراه به فإن اشتراه بغير الثمن يقوم بالنقد الغالب في المصر، و قال محمد رحمه الله تعالى بغالب النقد في المصر على كل حال

Zakāh is obligatory on goods [held] for trade (*'urūḍ at-tijārah*), whatever they may be, when their value reaches the *niṣāb* of silver or gold. It is valued, according to whichever of the two is more beneficial for the poor and the destitute.

Abū Yūsuf, may Allah have mercy on him, said that one should evaluate it with what one purchased it; if he purchased it with something other than money, it should be evaluated in the predominant currency in the city, but Muḥammad, may Allah have mercy on him, said that [it should be evaluated] in the predominant currency in the city under all circumstances.

و إذا كان النصاب كاملا في طرفي الحول فنقصانه فيما بين ذلك لا يسقط الزكاة، ويضم قيمة العروض إلى الذهب والفضة وكذلك يضم الذهب إلى الفضة بالقيمة حتى يتم النصاب عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : لا يضم الذهب إلى الفضة بالقيمة ويضم بالأجزاء

When the *niṣāb* is complete at both ends of the year,[179] its falling below [the *niṣāb*] in between that does not cause [the obligation of] *zakāh* to lapse.[180]

The value of the stock is to be added to the value of gold and silver, and likewise, gold is to be added to silver, with [regards to] value until the *niṣāb* is complete, according to Abū Ḥanīfah, may Allah have mercy on him, but they[181] said, may Allah have mercy on them, that gold is not to be added to the silver in value, but [that] it is to be added in portions.[182]

باب زكاة الزروع والثمار

ZAKĀH ON CROPS (*ZURŪ‘*) AND FRUITS (*THIMĀR*)

قال أبو حنيفة رحمه الله: في قليل ما أخرجته الأرض وكثيره العشر واجب سواء سقي سيحا أو سقته السماء إلا الحطب والقصب والحشيش، وقال أبو يوسف و محمد رحمهما الله: لا يجب العشر إلا في ما له ثمرة باقية إذا بلغت خمسة أوسق، والوسق : ستون صاعا بصاع النبي صلى الله عليه وسلم

Abū Ḥanīfah, may Allah have mercy on him, said that a tenth (*‘ushr*) is due on[183] whatever the land yields whether little or much, irrespective of whether it was irrigated by flowing water[184] or the sky watered it,[185] except firewood, bamboo and grass.[186]

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that *‘ushr* is not obligatory except for that which has lasting fruit, [and that is] when it reaches five *awsuq*.

One *wasq*[187] is sixty *ṣā‘s*,[188] according to the *ṣā‘* of the Prophet ﷺ.

وليس في الخضروات عندهما رحمهما الله تعالى عشر، وما سقي
بغرب أو دالية أو سانية ففيه نصف العشر على القولين، وقال أبو
يوسف رحمه الله تعالى: في ما لا يوسق كالزعفران والقطن يجب
فيه العشر إذا بلغت قيمته خمسة أوسق من أدنى ما يدخل تحت
الوسق، وقال محمد رحمه الله تعالى: يجب العشر إذا بلغ الخارج
خمسة أمثال من أعلى ما يقدر به نوعه فاعتبر في القطن خمسة
أحمال وفي الزعفران خمسة أمناء

According to [Abū Yūsuf and Muḥammad], may Allah have mercy on them, there is no *'ushr* on vegetables.

There is half of a tenth (*'ushr*),[189] according to both verdicts,[190] on that which is watered with large buckets, a water-wheel or a water-drawing camel.

Abū Ḥanīfah, may Allah have mercy on him, said that of those that are not measured by the *wasq*, like saffron and cotton, the tenth (*'ushr*) becomes obligatory when its value reaches the value of five *awsuq*, according to the cheapest [crop] that is [evaluated] under the *wasq* [method of measurement]. Muḥammad, may Allah have mercy on him, said that a tenth becomes obligatory when the produce reaches five units of the highest [unit] that is used to determine its category. Therefore, for cotton, he took five loads[191] [as the standard] and for saffron, [he standardised on] five *maunds (mann)*.[192]

وفي العسل العشر إذا أخذ من أرض العشر قل أو كثر، وقال أبو
يوسف رحمه الله تعالى : لا شيء فيه حتى تبلغ عشرة أزقاق، وقال
محمد رحمه الله تعالى : خمسة أفراق، والفرق : ستة و ثلاثون رطلا
بالعراقي، وليس في الخارج من أرض الخراج عشر

From honey, be it little or much,[193] a tenth is due when it is acquired from land that is [also] subject to *'ushr*. Abū Yūsuf, may Allah have mercy on him, said that there is nothing [due] on it until it amounts to ten *azqāq*,[194] but Muḥammad, may Allah have mercy on him, said [that there is nothing due from it until it amounts to] five *afrāq*. One *faraq* is thirty-six [Iraqi] *riṭls*.

There is no tenth due from the produce of *kharāj*[195] land.

باب من يجوز دفع الصدقة إليه ومن لا يجوز

THOSE TO WHOM IT IS PERMITTED TO PAY *ZAKĀH* AND THOSE TO WHOM IT IS NOT PERMITTED

Those Entitled

قال الله تعالى : ﴿ إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينَ ... الآية ﴾ فهذه ثمانية أصناف، فقد سقط منها المؤلفة قلوبهم لأن الله تعالى أعز الإسلام وأغنى عنهم

Allah ﷻ said:

"Zakāh is for: the poor, the destitute, those who collect it, reconciling people's hearts, freeing slaves, those in debt, spending in the Way of Allah, and travellers. It is a legal obligation from Allah. Allah is All-Knowing, All-Wise."

(At-Tawbah 9:60)

These are eight categories, and of them, *"al-mu'allafati qulūbu-hum – those whose hearts are to be reconciled"* has lapsed because Allah ﷻ has honoured Islam and freed [it of need] of them. [The remainder of the seven categories are:]

والفقير : من له أدنى شيء، والمسكين : من لا شيء له، والعامل: يدفع إليه الإمام إن عمل بقدر عمله، وفي الرقاب: أن يعان المكاتبون في فك رقابهم، والغارم : من لزمه دين، وفي سبيل الله : منقطع الغزاة، وابن السبيل : من كان له مال في وطنه وهو في مكان آخر لا شيء له فيه فهذه جهات الزكاة، وللمالك أن يدفع إلى كل واحد منهم وله أن يقتصر على صنف واحد

1. The poor person (*faqīr*) is someone who has very few things.
2. The destitute person (*miskīn*) is someone who has nothing at all.

   The one who administers *zakāh* (*'āmil*) is [someone] whom the Imam[196]

3. pays when he carries out work [in the administration, collection and due disposal of *zakāh*] according to how much work he has done.
4. Slaves (*fi'r-riqāb*) are the *mukātab* [slaves][197] who are to be assisted in securing release from their bondage [of slavery].
5. The one in debt (*ghārim*) is someone who is obligated with a debt.
6. In the way of Allah (*fī sabīli'llāh*) is someone who is prevented [by poverty] from struggling in the cause of Allah.
7. The wayfarer (*ibn as-sabīl*) is someone who has wealth in his own land but he himself is currently in another place in which he has nothing.

These are the avenues of *zakāh*. The owner may pay to all of them, or he may limit [the payment] to only one category.

Those Not Entitled

ولا يجوز أن يدفع الزكاة إلى ذمي ولا يبنى بها مسجد ولا يكفن
بها ميت ولا يشترى بها رقبة تعتق ولا تدفع إلى غني ولا يدفع المزكي
زكاته إلى أبيه وجده و إن علا ولا إلى ولده وولد ولده و إن سفل ولا
إلى أمه وجداته و إن علت و لا إلى امرأته ولا تدفع المرأة إلى زوجها
عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : تدفع إليه

1. It is not permitted [for anyone] to pay *zakāh* to a *dhimmī*,
2. Nor should a *masjid* (mosque) be built with it,
3. Nor a deceased person be shrouded with it,
4. Nor a slave bought to be set free,
5. Nor should it be payed to a wealthy person.

The one paying *zakāh (muzakkī*) is not to pay it to:

6. His [own] father, grandfather, however high,
7. His [own] son, grandson, however low,
8. His mother, grandmothers, however high, and nor to
9. His [own] wife.
10. The wife is not to pay it to her husband, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[198] may Allah have mercy on them, said that she may pay [it] to him.

ولا يدفع إلى مكاتبه ولا مملوكه ولا مملوك غني وولد غني إذا كان صغيرا، ولا يدفع إلى بني هاشم وهم : آل علي وآل عباس وآل جعفر وآل عقيل وآل حارث بن عبد المطلب ومواليهم

One does not pay it to:

1. His own *mukātab* [slave],
2. Nor his slave [in his ownership],
3. Nor the slave owned by a wealthy person,
4. Nor the son of a wealthy person if he is a minor.

One does not pay it to Banū Hāshim and they are:

1. The family of ‘Alī,
2. The family of ‘Abbās,
3. The family of Ja‘far,
4. The family of ‘Aqīl,
5. The family of Ḥārith ibn ‘Abd al-Muṭṭalib,
6. Nor their freed slaves.

وقال أبو حنيفة ومحمد رحمهما الله تعالى : إذا دفع الزكاة إلى رجل يظنه فقيرا ثم بان أنه غني أو هاشمي أو كافر أو دفع في ظلمة إلى فقير ثم بان أنه أبوه أو ابنه فلا إعادة عليه، وقال أبو يوسف رحمه الله تعالى : وعليه الإعادة، ولو دفع إلى شخص ثم علم أنه عبده أو مكاتبه لم يجز في قولهم جميعا

Abū Ḥanīfah, may Allah have mercy on him, said that if one pays the *zakāh* to a person believing him to be a poor person, and then it becomes clear to him that he is wealthy, or [pays it to] a hāshimī, or a disbeliever (*kāfr*), or he gives it to a poor person in the dark and then it becomes clear to him that it is his [own] father or son, there is no [obligation] upon him to pay again, but Abū Yūsuf, may Allah have mercy on him, said that repayment is [incumbent] upon him.

If one paid it to a person and then realised that he was his [own] slave, or his own *mukātab* [slave], such payment is not valid according to their verdicts, all of them.[199]

ولا يجوز دفع الزكاة إلى من يملك نصابا من أي مال كان، ويجوز دفعها إلى من يملك أقل من ذلك و إن كان صحيحا مكتسبا، و يكره نقل الزكاة من بلد إلى بلد آخر و إنما تفرق صدقة كل قوم فيهم إلا أن يحتاج أن ينقلها الإنسان إلى قرابته أو إلى قوم هم أحوج إليه من أهل بلده

The payment of *zakāh* is not permitted to someone who owns *niṣāb* in any [form of] property whatsoever, but such payment is permitted to be made to someone who owns less than that, even though he may be healthy and earning [an income].

The transference of *zakāh* from one land[200] to another land is disapproved and the *zakāh* of each group is to be distributed within them,[201] unless one needs to transfer it to his [deserving] relatives or to a group who are needier of it than those of his own land.

باب صدقة الفطر

ṢADAQAT AL-FIṬR

صدقة الفطر واجبة على الحر المسلم إذا كان مالكا لمقدار النصاب فاضلا عن مسكنه وثيابه وأثاثه وفرسه وسلاحه وعبيده للخدمة، يخرج ذلك عن نفسه وعن أولاده الصغار وعبيده للخدمة، ولا يؤدي عن زوجته ولا عن أولاده الكبار و إن كانوا في عياله، ولا يخرج عن مكاتبه ولا عن مماليكه للتجارة، والعبد بين الشريكين لا فطرة على واحد منهما، و يؤدي المسلم الفطرة عن عبده الكافر

The *ṣadaqat al-fiṭr* (or *fiṭrah*) is incumbent upon every free Muslim, when he is the owner of the amount of the *niṣāb* over and above his residence, his clothes, his assets, his horses, his weapons and his slaves kept for personal service [not for sale].[202]

He pays it on behalf of himself, his minor children and his slaves who are kept for service, but he is not to pay it on behalf of his wife nor on behalf of his adult children, even though they may be among his dependents.

He is not to pay it on behalf of his *mukātab* [slave], his slaves kept for

trade or the slave shared between two partners and there is no [obligation of paying] *fiṭrah* on either of the two [partners].

The Muslim pays *fiṭrah* on behalf of his non-Muslim slave.

The Amount of *Fiṭrah*

والفطرة : نصف صاع من بر أو صاع من تمر أو زبيب أو شعير، والصاع عند أبي حنيفه و محمد رحمهما الله تعالى ثمانية أرطال بالعراقي، وقال أبو يوسف رحمه الله تعالى : خمسة أرطال وثلث رطل، ووجوب الفطرة يتعلق بطلوع الفجر الثانى من يوم الفطر، فمن مات قبل ذلك لم تجب فطرته ومن أسلم أو ولد بعد طلوع الفجر لم تجب فطرته، والمستحب أن يخرج الناس الفطرة يوم الفطر قبل الخروج إلى المصلى فإن قدموها قبل يوم الفطر جاز و إن أخروها عن يوم الفطر لم تسقط وكان عليهم إخراجها

The [amount of] *fiṭrah* is one-half *ṣāʻ* of wheat, or one [full] *ṣāʻ* of dates, raisins or barley.

The *ṣāʻ*, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, is eight Iraqi *riṭls*, but Abū Yūsuf, may Allah have mercy on him, said, "[One *ṣāʻ* is equal to] five *riṭls* plus one-third of a *riṭl* (5.33 *riṭls).*"

The obligation of *fiṭrah* is connected to the rising of the second dawn[203] on the Day of *Fiṭr*.

Whoever dies before that, [the payment of] his *fiṭrah* is not obligatory [upon him], and whoever becomes Muslim or is born after the dawning of the *fajr*, his *fiṭrah* is not obligatory.

It is recommended for people to pay out the *fiṭrah* on the day of *fiṭr*, before proceeding to the place of [*ʻĪd*] prayer, but if they have [paid] it in advance before the Day of *Fiṭr* it is valid, and if they delay it till [after] the Day of *Fiṭr*, its obligation does not lapse and its payment is [still] obligatory upon them.

كتاب الصوم

ṢAWM – FASTING

Types of Fasting (*Ṣawm*)

الصوم ضربان : واجب ونفل، فالواجب ضربان : منه ما يتعلق
بزمان بعينه كصوم رمضان والنذر المعين فيجوز صومه بنية من
الليل فإن لم ينو حتى أصبح أجزأته النية ما بينه وبين الزوال

Fasting (*ṣawm*) is of two types:

1. Obligatory and
2. Supererogatory.

The obligatory [type of fast] is of two types:

1. Of it is [that] which is connected to specific time, like the fasting of Ramadan and of specific vows (*nadhr)*. Its fast is permitted with an intention formed during the night, and if one does not make the intention until the morning, the intention [made] between that [time] and the declination of the sun [from its meridian] is sufficient for him, and

والضرب الثاني : ما يثبت في الذمة كقضاء رمضان والنذر المطلق
والكفارات فلا يجوز صومه إلا بنية من الليل وكذلك صوم الظهار،
والنفل كله يجوز بنية قبل الزوال

2. The second type [of fast] is [that] which becomes necessary to fulfil, like the *qaḍā'* of Ramadan, the unrestricted vow and [fasting for] expiations (*kaffārāt)*. The fasting of this [type], and likewise, the fast for *ẓihār*,[204] is not permitted except with an intention [formed] during the night.

As to supererogatory [fasts], all of them are permitted with an intention [formed] prior to the declining [of the sun].

Ramadan Moonsighting

وينبغي للناس أن يلتمسوا الهلال في اليوم التاسع والعشرين من
شعبان فإن رأوه صاموا وإن غم عليهم أكملوا عدة شعبان ثلاثين يوما
ثم صاموا، ومن رأى هلال رمضان وحده صام وإن لم يقبل الإمام
شهادته، وإذا كان في السماء علة قبل الإمام شهادة الواحد العدل في
رؤية الهلال رجلا كان أو امرأة حرا كان أو عبدا فإن لم يكن في
السماء علة لم تقبل شهادته حتى يراه جمع كثير يقع العلم بخبرهم،
ووقت الصوم من حين طلوع الفجر الثاني إلى غروب الشمس

It is incumbent upon people to seek the [new] crescent on the twenty-ninth day of Sha‘bān.[205] If they see it, then they fast [the following day], but if it is concealed from them, they complete the period of Sha‘bān as thirty days. Then they fast [Ramadan].[206]

Whoever sees the crescent of Ramadan by himself, is to begin fasting, even if the Imam[207] does not accept his testimony.

If there is an obstruction in the sky, the Imam accepts the testimony of a single honest person for the sighting of the crescent [moon of Ramadan], be that person a man or a woman, freeman or slave, but if there is no obstruction in the sky, the testimony is not accepted unless a large group [of people] sees it,[208] upon the reporting of which [definite] knowledge can be based.[209]

The timing of the fast is from the instance of the dawning of the second *fajr* until the setting of the sun.

والصوم هو : الإمساك عن الأكل والشرب والجماع نهارا مع النية

The Meaning of Fasting

Fasting is:

1. Abstinence from:
   i. Eating,
   ii. Drinking, and
   iii. Sexual intercourse,
2. During the day,
3. With intention.

فإن أكل الصائم أو شرب أو جامع ناسيا لم يفطر، فإن نام
فاحتلم أو نظر إلى امرأته فأنزل أو ادهن أو احتجم أو اكتحل
أو قبل لم يفطر

Miscellaneous Issues Pertaining to Fasting

If the person who is fasting (*ṣā’im*) eats, drinks or has sexual intercourse out of forgetfulness, he has not broken his fast. [Similarly] if he sleeps and has a seminal discharge,[210] looks at a woman and ejaculates, applies oil [to his body], undergoes cupping, applies kohl, or kisses [a woman], he has not broken his fast.

فإن أنزل بقبلة أو لمس فعليه القضاء و لا كفارة عليه، ولا بأس
بالقبلة إذا أمن على نفسه ويكره إن لم يأمن

If he ejaculates because of kissing or touching, then he is obligated to do *qaḍā’*, but is not obligated to expiate it. There is no harm in kissing if one is in control of oneself, and it is disapproved [to kiss] if not in control of oneself.

وإن ذرعه القيء لم يفطر وإن استقاء عامدا ملأ فمه فعليه
القضاء ومن ابتلع الحصاة أو الحديد أو النواة أفطر وقضى

If vomiting overwhelms him,[211] his fast is not broken, but if he deliberately induces vomit such as fills his mouth, then *qaḍā’* is [due] upon him.

Whoever swallows a pebble, a [piece of] metal or a pit,[212] has broken his fast and makes up [the fast by way of] *qaḍā’*.

ومن جامع عامدا في أحد السبيلين أو أكل أو شرب ما يتغذى به
أو يتداوى به فعليه القضاء والكفارة

Whoever deliberately:

1. Has sexual intercourse in either of the two passages, or
2. Eats or drinks that by which nourishment is acquired or by which his medical requirement is achieved,

is obligated to [make up the fast by] *qaḍā’* as well as expiate it.

والكفارة : مثل كفارة الظهار

The expiation [of fasts] is like the expiation of *ẓihār*.[213]

ومن جامع فيما دون الفرج فأنزل فعليه القضاء ولا كفارة عليه

Whoever has sexual intercourse in other than the vaginal passage (*farj*),[214] and ejaculates, then *qaḍā'* is due upon him but no expiation is due upon him.

وليس في إفساد الصوم في غير رمضان كفارة

There is no expiation for violating a fast outside of [the fast] of Ramadan.

ومن احتقن أو استعط أ و أقطر في أذنه أو داوى جائفة أو آمة
بدواء رطب فوصل إلى جوفه أو دماغه أفطر

Whoever takes an enema,[215] sniffs [something through his nostrils], pours drops into his ear, treats a body cavity or a wound with moist medicine and it reaches his stomach or his brain, has invalidated his fast.[216]

و إن أقطر في إحليله لم يفطر عند أبي حنيفة ومحمد رحمهما الله
تعالى وقال أبو يوسف رحمه الله تعالى : يفطر

If one pours drops [of medicine] into his urethra, he does not break his fast, according to Abū Ḥanīfah and Muḥammad, may Allah, exalted is He, have mercy on them, but Abū Yūsuf, may Allah, exalted is He, have mercy on him, said that he does break the fast.

ومن ذاق شيئا بفمه لم يفطر ويكره له ذلك, ويكره للمرأة أن
تمضغ لصبيها الطعام إذا كان لها منه بد, ومضغ العلك لا يفطر
الصائم ويكره

Whoever tastes something with his mouth, does not break his fast, but it is disapproved for him.

It is disapproved for a woman to chew food for her child, if there is [another] way out for her.

The chewing of gum does not make the one who is fasting break the fast, though it is disapproved.

ومن كان مريضا في رمضان فخاف إن صام إزداد مرضه أفطر
وقضى، و إن كان مسافرا لا يستضر بالصوم فصومه أفضل و إن
أفطر وقضى جاز، و إن مات المريض أو المسافر وهما على حالهما
لم يلزمهما القضاء، و إن صح المريض أو أقام المسافر ثم ماتا
لزمهما القضاء بقدر الصحة والإقامة

Whoever is ill in [the month of] Ramadan, and fears [that], if he fasts, his illness will intensify, should not fast and [he] performs it as *qaḍā’*.

If one is a traveller, who is not harmed by fasting, then that he fast is better, but it is permitted for him not to fast but to delay the performance [of the fast].

If the ill person or the traveller dies, and they were both in that state [of illness or journey], *qaḍā’* is not binding upon them. If, however, the ill person recovers [from his illness], or the traveller becomes a resident and, thereafter, they die, *qaḍā’* is binding upon them to the extent of the duration of their becoming well or adopting residence [respectively].[217]

وقضاء رمضان إن شاء فرقه و إن شاء تابعه فإن أخره حتى دخل
رمضان آخر صام رمضان الثاني وقضى الأول بعده ولا فدية عليه

[With regards to] the *qaḍā’* of [the fasts of] Ramadan, one may separate them, if he wants, or if he wants, he may perform them successively. If one delays [the *qaḍā’*] until the following Ramadan begins, he should fast the second Ramadan and perform the first [Ramadan’s missed fasts] by way of *qaḍā’* after it, and there is no redemption (*fidyah*) due from him.

والحامل والمرضع إذا خافتا على أنفسهما أو ولديهما أفطرتا وقضتا
ولا فدية عليهما

When a pregnant woman and a breastfeeding woman are apprehensive for themselves or [for] their child, they break the fast, and fast by way of *qaḍā’*, and there is no redemption due from them.

والشيخ الفاني الذي لا يقدر على الصيام يفطر و يطعم لكل يوم
مسكينا كما يطعم في الكفارات

The decrepit old person who is not able to fast should not fast. He should [instead] feed one needy person for each day [of missed fasting] just like one would feed for expiations.

ومن مات وعليه قضاء رمضان فأوصى به أطعم عنه وليه لكل
يوم مسكينا نصف صاع من بر أو صاعا من تمر أو شعير

Whoever dies and the *qaḍā’* of Ramadan was due from him, and he had put it in his will, his executor (*walī*) should feed on his behalf one destitute person for each day [missed] a half *ṣā‘* of wheat or a *ṣā‘* of dates or barley.

ومن دخل في صوم التطوع ثم أفسده قضاه

Whoever begins a voluntary fast and then violates it, should make it up by way of *qaḍā’*.

و إذا بلغ الصبي أو أسلم الكافر في رمضان أمسكا بقية يومهما
وصاما بعده ولم يقضيا ما مضى

When a minor attains [the age of] majority or a non-Muslim becomes Muslim in Ramadan, they abstain [from things that nullify the fast] for the rest of [that] day of theirs, and they fast after that [day]. They do not make up by way of *qaḍā’* whatever [fasts] have passed.[218]

ومن أغمي عليه في رمضان لم يقض اليوم الذي حدث فيه الإغماء
وقضى ما بعده و إذا أفاق المجنون في بعض رمضان قضى ما مضى
منه و صام ما بقي

Whoever is overcome by unconsciousness during Ramadan does not make up as *qaḍā’* [the fast of] the day in which the unconsciousness took place, but he should make up as *qaḍā’* whatever [fasts] come after it.

When the insane person recovers [from his insanity] for a part of Ramadan, [after Ramadan] he should make up by way of *qaḍā’* whatever [fasts] have passed, and he should fast whatever [days] remain [in that month].

و إذا حاضت المرأة أو نفست أفطرت وقضت إذا طهرت

When a woman menstruates or enters the postnatal period, she should

break her fast[219] and make it up by way of *qaḍā'* when she becomes pure.

و إذا قدم السافر أو طهرت الحائض في بعض النهار أمسكا عن الطعام والشراب بقية يومهما

When a traveller arrives [at his destination], or a menstruating woman attains purity during [any] part of the day, they should abstain from food and drink for the remainder of [that] day of theirs.

ومن تسحر وهو يظن أن الفجر لم يطلع أو أفطر وهو يرى أن الشمس قد غربت ثم تبين أن الفجر كان قد طلع أو أن الشمس لم تغرب قضى ذلك اليوم ولا كفارة عليه

Whoever wakes up for the pre-dawn meal and believes that *fajr* has not yet dawned or breaks his fast believing that the sun has set, and then it becomes evident [to him] that the *fajr* had already dawned or that the sun had not yet set, should perform [one fast] as *qaḍā'* for that day, but there is no expiation due from him.

ʻĪd al-Fiṭr Moonsighting

ومن رأى هلال الفطر وحده لم يفطر، و إذا كانت بالسماء علة لم يقبل الإمام في هلال الفطر إلا شهادة رجلين أو رجل وامرأتين و إن لم تكن بالسماء علة لم يقبل إلا شهادة جماعة يقع العلم بخبرهم

Whoever alone sees the crescent of the [*ʻĪd* of] *fiṭr*, should not break his fast.

When there is an impediment in the sky [which hinders the sighting of the moon], the Imam should not accept for [the sighting of] the crescent of the [*ʻĪd* of] *fiṭr* anything but the testimony of two men, or one man and two women. However, if there is no obstruction in the sky, he should not accept anything except the testimony of a group by whose reporting [definite] knowledge comes about.

باب الاعتكاف

Iʻ TIKĀF – SECLUSION

الاعتكاف مستحب، وهو اللبث في المسجد مع الصوم ونية الاعتكاف

I'tikāf is a recommended [act],[220] and it is [defined as] staying inside the mosque,[221] with fasting and [with] the intention of *i'tikāf*.

ويحرم على المعتكف: الوطئ واللمس والقبلة، وإن أنزل بقبلة أو لمس فسد اعتكافه وعليه القضاء

Sexual intercourse, fondling and kissing are forbidden (*ḥarām*) for someone in *i'tikāf (mu'takif*), and if he ejaculates due to kissing or fondling, his *i'tikāf is* nullifed, and [making it up by] *qaḍā'* is due from him.

ولا يخرج من المسجد إلا لحاجة الإنسان أو للجمعة، ولا بأس بأن يبيع ويبتاع في المسجد من غير أن يحضر السلعة، ولا يتكلم إلا بخير ويكره له الصمت

Someone who is in *i'tikāf* is not to leave the mosque except for a necessity or for the *Jumu'ah* (Friday prayer). There is no objection to him selling and buying in the mosque without making the goods present [in the mosque]. He should only speak of good [things], but total silence is disapproved for him.

فإن جامع المعتكف ليلا أو نهارا ناسيا أو عامدا بطل اعتكافه، و لو خرج من المسجد ساعة بغير عذر فسد اعتكافه عند أبي حنيفة رحمه الله تعالى، و قالا رحمهما الله تعالى : لا يفسد حتى يكون أكثر من نصف يوم

If someone in *i'tikāf* has sexual intercourse, whether by night or by day, forgetfully or deliberately, his *i'tikāf* becomes void. If he leaves the mosque for a moment without a [valid] excuse, his *i'tikāf* becomes void, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[222] may Allah have mercy on them, said that it is not void unless it is for more than half a day.

ومن أوجب على نفسه اعتكاف أيام لزمه اعتكافها بلياليها وكانت متتابعة وإن لم يشترط التتابع فيها

Whoever binds himself to the *i'tikāf* of [a number of] days, their *i'tikāf*

along with their nights is binding upon him, and they are to be done consecutively, even if the consecutive order is not stipulated in them.

كتاب الحج

ḤAJJ – PILGRIMAGE

The Stipulations of Obligation

الحج : واجب على الأحرار المسلمين البالغين العقلاء الأصحاء
إذا قدروا على الزاد والراحلة فاضلا عن المسكن وما لا بد منه،
وعن نفقة عياله إلى حين عوده وكان الطريق آمنا

Ḥajj is obligatory on free Muslims, who are adult, sane and healthy, when they are able to get provisions for the journey and a mount [for travel], over and above [the cost of their] residence and of what is unavoidably needed, and over and above maintenance expenses for their families until the time of their return, and [as long as] the route is safe.

ويعتبر في حق المرأة أن يكون لها محرم يحج بها أو زوج ولا
يجوز لها أن تحج بغيرهما إذا كان بينها وبين مكة مسيرة ثلاثة أيام
فصاعدا

It is required with respect to a woman that there is a *maḥram*[223] or her husband to be with her, who perform the *ḥajj* with her. It is not permitted for her to perform the *ḥajj* without [one of] these two if the journey between her and Makkah is three days or more.

باب تحديد المواقيت

MAWĀQĪT – GEOGRAPHIC LIMITS

والمواقيت التي لا يجوز أن يتجاوزها الإنسان إلا محرما : لأهل المدينة ذو الحليفة، ولأهل العراق ذات عرق، ولأهل الشام الجحفة، ولأهل النجد قرن، ولأهل اليمن يلملم، فإن قدم الإحرام على هذه المواقيت جاز، ومن كان بعد المواقيت فميقاته الحل، ومن كان بمكة فميقاته في الحج الحرم وفي العمرة الحل

The *mawāqīt*[224] (limits) that a person is not to cross except as a *muḥrim* (someone who is in the state of *iḥrām):*

1. For the people of Madīnah, it is Dhu'l-Ḥulayfah,
2. For the people of Iraq, it is Dhāt 'Irq,
3. For the people of Syria, it is al-Juḥfah,
4. For the people of Najd, it is Qarn, and
5. For the people of Yemen, it is Yalamlam.[225]

If someone adopts the state of *iḥrām* before these *mawāqīt* it is permissible. Whoever [resides] within the *mawāqīt,* then his *mīqāt* is [at] al-Ḥill.[226] Whoever is at Makkah, then his *mīqāt* is the Ḥaram [itself] for the *ḥajj,* and it is al-Ḥill for the *'umrah.*

Ihrām – the *Ḥajj* Costume

وإذا أراد الإحرام اغتسل أو توضأ – والغسل أفضل

When one intends [to enter the state of] *iḥrām,* he takes a *ghusl* or performs *wuḍū',* [but] *ghusl* is better.

ولبس ثوبين جديدين أو غسيلين: إزارا ورداء، ومس طيبا إن كان له وصلى ركعتين وقال :

One dons two new, or washed, garments, a wrap for the lower half of the body *(izār)* and an upper covering *(ridā'),* applies perfume, if he has any, and prays two *rak'ahs* and says:

اَللَّهُمَّ إِنِّي أُرِيدُ الْحَجَّ فَيَسِّرْهُ لِي وَتَقَبَّلْهُ مِنِّي

"*Allāhumma innī urīdu'l-ḥajja, fa yassir-hu lī, wa taqabbal-hu minnī* – O Allah, I intend to perform the *ḥajj,* so make it easy for me and accept it from

me."

Talbiyah – the *Ḥajj* Chant

ثم يلبي عقيب صلاته

Thereafter, following his prayer, he says the *talbiyah.*

فإن كان مفردا بالحج نوى بتلبيته الحج، والتلبية أن يقول :

If he is performing the *ḥajj* alone [as *ifrād]* then he intends by his *talbiyah* the *ḥajj,* and the *talbiyah* is to say:

لَبَّيْكَ اللَّهُمَّ لَبَّيْكَ، لَبَّيْكَ لَا شَرِيكَ لَكَ لَبَّيْكَ، إِنَّ الْحَمْدَ وَالنِّعْمَةَ لَكَ وَالْمُلْكَ، لَا شَرِيكَ لَكَ

"labbayk'allāhumma labbayka, labbayka lā sharīka laka, labbayka, inna'l-ḥamda wa'n-ni'mata laka wa'l-mulka, lā sharīka laka – here I am, at Your service, o Allah, here I am at Your service. Here I am at your service, You have no partner, here I am at Your service. All praise and all bounty is for You, and all sovereignty. You have no partner."

ولا ينبغي أن يخل بشيء من هذه الكلمات فإن زاد فيها جاز

It is not desirable to leave out any of these words, but if he adds to them it is permissible.

Prohibitions for the *Muḥrim*

فإذا لبى فقد أحرم فليتق ما نهى الله عنه من الرفث والفسوق والجدال

When someone says the *talbiyah*, he has entered *iḥrām,*[227] and so let him abstain from whatever Allah has prohibited of obscenity, immoralities and quarrelling.

ولا يقتل صيدا ولا يشير إليه ولا يدل عليه

He should not kill prey, point [someone] towards it, nor direct [someone] towards it.

ولا يلبس قميصا ولا سراويل ولا عمامة ولا قلنسوة ولا قباء ولا خفين إلا أن لا يجد نعلين فيقطعهما من أسفل الكعبين

He should not wear a shirt, trousers, turban, cap, an outer garment or boots, unless he does not find sandals – in which case he is to cut them below the ankles.

ولا يغطي رأسه ولا وجهه، ولا يمس طيبا

He is not to cover his head or his face. He is not to apply perfume.[228]

ولا يحلق رأسه ولا شعر بدنه، ولا يقص من لحيته ولا من ظفره

He is not to shave his head or the hair of [any part of] his body.[229]
He is not to trim his beard or his nails.

ولا يلبس ثوبا مصبوغا بورس ولا بزعفران ولا بعصفر إلا أن يكون غسيلا لا ينفض الصبغ

He is not to wear a cloth dyed in *waras* (a yellow dye), saffron or safflower, unless it is washed and the colour does not exude.[230]

Allowances for the *Muḥrim*

ولا بأس بأن يغتسل ويدخل الحمام ويستظل بالبيت والمحمل ويشد في وسطه الهميان

There is no objection to taking a bath, entering a public bath, seeking shade in a room or under a canopy, or tying a money-belt around the waist.

ولا يغسل رأسه ولا لحيته بالخطمي

He should not wash his head or his beard with althaea.[231]

ويكثر من التلبية عقيب الصلوات وكلما علا شرفا أو هبط واديا أو لقي ركبانا وبالأسحار

He should chant the *talbiyah* plentifully following the prayers and whenever he ascends a height or descends [into] a valley, meets a group of riders, or at the time before dawn *(saḥr).*[232]

IFRĀD

Ṭawāf al-Qudūm – Circumambulation upon Arrival[233]

فإذا دخل بمكة ابتدأ بالمسجد الحرام فإذا عاين البيت كبر
وهلل ثم ابتدأ بالحجر الأسود فاستقبله وكبر وهلل ورفع يديه مع
التكبير، واستلمه وقبله إن استطاع من غير أن يؤذي مسلما ثم
أخذ عن يمينه ما يلي الباب وقد اضطبع رداءه قبل ذلك فيطوف
بالبيت سبعة أشواط

When one enters Makkah, he begins at *al-Masjid al-Ḥarām.* When he sets his eyes upon the House (the Ka‘bah), he says *takbīrs (allāhu akbar)* and *tahlīls (lā ilāha illa'llāh),* then begins at the Black Stone *(al-Ḥajar al-aswad);* he faces it and says *takbīrs* and *tahlīls*, whilst raising both his hands with the *takbīr*. He should salute it and kiss it if he can, without causing annoyance or harm[234] to any Muslim. Then he begins with his right side that is adjacent to the door [of the Ka‘bah], having before that placed the top sheet of his upper covering sheet under the right shoulder and over the left shoulder *(iḍṭibā‘),*[235] and circumambulates (in *ṭawāf)* the House in seven circuits.

ويجعل طوافه من وراء الحطيم ويرمل في الأشواط الثلاث الأول
ويمشي فيما بقي على هينته ويستلم الحجر كلما مر به إن استطاع
ويختم الطواف بالاستلام

He makes his circumambulations outside the *ḥaṭīm*[236] and trots (*ramal*)[237] in the first three circuits and walks in the remainder in his normal gait [with stillness and dignity]. He should salute[238] the [Black] Stone each time he passes by it, if he can, and end his circumambulation with saluting [the Black Stone].

ثم يأتي المقام فيصلي عنده ركعتين أو حيث ما تيسر من المسجد،
وهذا الطواف طواف القدوم وهو سنة ليس بواجب وليس على
أهل مكة طواف القدوم

Then he comes to the Station [of Ibrāhīm] and prays two units at it, or wherever within the *Masjid* it is possible.

This *ṭawāf* is the *ṭawāf al-qudūm,*[239] and it is sunnah, not obligatory. There is no [requirement] for the residents of Makkah [to perform] the *ṭawāf al-qudūm.*

Sa'y – Going Vigorously and Quickly[240] Between Ṣafā and Marwah

ثم يخرج إلى الصفا فيصعد عليه و يستقبل البيت و يكبر و يهلل
و يصلي على النبي صلى الله عليه وسلم و يدعو الله تعالى لحاجته

Then one proceeds to [the mount of] Ṣafā and ascends it. He faces the House, says the *takbīr,* asks for blessings on the Prophet and supplicates Allah, exalted is He, for his needs.

ثم ينحط نحو المروة ويمشي على هينته فإذا بلغ إلى بطن الوادي
سعى بين الميلين الأخضرين سعيا حتى يأتي المروة فيصعد عليها
و يفعل كما فعل على الصفا وهذا شوط فيطوف سبعة أشواط يبدأ
بالصفا ويختم بالمروة

Then he descends towards [the Mount of] Marwah and walks at his normal gait. When he reaches the middle of the valley, he goes quickly and vigorously between between the two green lines, until he comes to [the mount of] Marwah and ascends it. [Here] he does as he did on Ṣafā. This is one circuit. So, he performs seven circuits, beginning at Ṣafā and ending at Marwah.[241]

ثم يقيم بمكة محرما فيطوف بالبيت كلما بدا له، و إذا كان قبل
يوم التروية بيوم خطب الإمام خطبة يعلم الناس فيها الخروج
إلى منى والصلاة بعرفات والوقوف والإفاضة، فإذا صلى الفجر يوم
التروية بمكة خرج إلى منى وأقام بها حتى يصلي الفجر يوم عرفة،
ثم يتوجه إلى عرفات فيقيم بها

Then he remains in Makkah in *iḥrām,* circumambulating the House

whenever he wishes.

One day before[242] the day of *tarwiyah,*[243] the Imam delivers an address[244] in which he instructs people about the departure to Minā, the prayer at ‘Arafāt, the standing [at ‘Arafah] and the [*ṭawāf*] *al-ifāḍah* – the circumambulation of ‘pressing on’.[245]

When he has prayed the *fajr* [prayer] on the day of *tarwiyah* in Makkah, he moves out towards Minā and remains there until he has prayed the *fajr* [prayer] on the day of ‘Arafah. Then he heads towards ‘Arafāt and stays there.

Staying at ‘Arafah

فإذا زالت الشمس من يوم عرفة صلى الإمام بالناس الظهر والعصر فيبتدئ بالخطبة أولا فيخطب خطبتين قبل الصلوة يعلم الناس فيهما الصلوة والوقوف بعرفة والمزدلفة ورمي الجمار والنحروالحلق وطواف الزيارة ويصلي بهم الظهر والعصر في وقت الظهر بأذان و إقامتين

On the day of ‘Arafah, when the sun declines,[246] the Imam leads the people in the *ẓuhr* and *‘aṣr* [prayers] beginning with the address; he delivers two addresses prior to the prayer in which he teaches people the prayer, stopping on ‘Arafah and Muzdalifah, pelting [with stones] at the *jamrahs,* the sacrifice *(naḥr),* shaving [the head] and the *ṭawāf az-ziyārah* (the circumambulation of visiting). He leads them in *ẓuhr* and *‘aṣr*, within the time *of ẓuhr*, with one *adhān* and two *iqāmahs.*

ومن صلى الظهر في رحله وحده صلى كل واحدة منهما في وقتها عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى: يجمع بينهما المنفرد

Whoever prays *ẓuhr* in his own camp on his own prays each of them at its time, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that the person who performs the prayer separate from the congregation *(munfarid)* combines them both.

ثم يتوجه إلى الموقف فيقف بقرب الجبل، وعرفات كلها موقف
إلا بطن عرنة

Then he heads towards the station *(mawqif)*[247] and stays close to the Mount [of Mercy *(Jabal ar-Raḥmah)]*. Apart from Baṭn ‘Urnah, the whole of ‘Arafāt is a [ritual] station.

وينبغي للإمام أن يقف بعرفة على راحلته ويدعو ويعلم الناس
المناسك ويستحب أن يغتسل قبل الوقوف بعرفة ويجتهد في الدعاء

The Imam ought to stop at ‘Arafah on his mount, to supplicate and instruct the people regarding the rites [of *ḥajj]*.

It is recommended to take a bath prior to the staying at ‘Arafah,[248] and to exert oneself in making supplications.

Staying at Muzdalifah

فإذا غربت الشمس أفاض الإمام والناس معه على هينتهم حتى
يأتوا المزدلفة فينزلون بها والمستحب أن ينزلوا بقرب الجبل الذي
عليه الميقدة يقال له قزح ويصلي الإمام بالناس المغرب والعشاء
في وقت العشاء بأذان وإقامة ومن صلى المغرب في الطريق لم يجز
عند أبي حنيفة ومحمد رحمهما الله تعالى

When the sun has set,[249] the Imam and the people with him pour forth at their normal pace until they come to Muzdalifah, where they alight. It is recommended that they alight close to the mountain upon which is the hearth *(mīqadah)* called Quzaḥ.[250]

The Imam leads the people in the prayer of *maghrib* and *‘ishā’* [combined] at the time of *‘ishā’*, with an *adhān* and an *iqāmah.*

Whoever prays the *maghrib* [prayer] along the way, it is not valid according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them.[251]

فإذا طلع الفجر صلى الإمام بالناس الفجر بغلس ثم وقف الإمام
ووقف الناس معه فدعا : والمزدلفة كلها موقف إلا بطن محسر

When *fajr* dawns, the Imam leads the people in the *fajr* [prayer], during

the dark period of the night *(ghalas)*. Then the Imam stands, and the people stand with him and he makes supplication. The whole of Muzdalifah is a station *(mawqif)* apart from Baṭn Muḥassir.

Minā

ثم أفاض الإمام والناس معه قبل طلوع الشمس حتى يأتوا منى فيبتدئ بجمرة العقبة فيرميها من بطن الوادي بسبع حصيات مثل حصاة الخذف، ويكبر مع كل حصاة ولا يقف عندها ويقطع التلبية مع أول حصاة

Then, before sunrise, the Imam and the people with him pour forth until they arrive at Minā. [Here,] one begins with the *jamarat al-'aqabah*, pelting it, from the bottom of the valley, with seven stones like small chips of gravel, with every stone pronouncing the *takbīr*. One does not stand next to it [but keeps moving forwards] and discontinues [saying] the *talbiyah* with the first stone [throw].

ثم يذبح إن أحب، ثم يحلق أو يقصر والحلق أفضل وقد حل له كل شيء إلا النساء

Then, if he wishes,[252] he slaughters [an animal] then shaves [his head] or trims [his hair], but shaving [the head] is better. [Now,] everything has become lawful for him except (sexual intercourse with) women.

Ṭawāf az-Ziyārah – Circumambulation of Visiting[253]

ثم يأتي مكة من يومه ذلك أو من الغد أو من بعد الغد فيطوف بالبيت طواف الزيارة سبعة أشواط فإن كان سعى بين الصفا والمروة عقيب طواف القدوم لم يرمل في هذا الطواف ولا سعي عليه و إن لم يكن قدم السعي رمل في هذا الطواف ويسعى بعده على ما قدمناه وقد حل له النساء

One then comes [back] to Makkah on that day of his or the day after or the day after that[254] and circumambulates the House [for] the *ṭawāf az-ziyārah* (circumambulation of visiting), [which is] seven circuits. If he had performed

sa'y between Ṣafā and Marwah after the *ṭawāf al-qudūm* (circumambulation of arrival) he does not perform *ramal* with this circumambulation, nor is there *sa'y* due from him. If he had not performed *sa'y* [after the *ṭawāf al-qudūm]*, he performs the *ramal* in this circumambulation and performs *sa'y* after it, on the basis of what we have mentioned earlier, and [sexual intercourse with] women has become lawful to him.

وهذا الطواف هو المفروض في الحج ويكره تأخيره عن هذه الأيام فإن أخره عنها لزمه دم عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : لا شيء عليه، ثم يعود إلى منى فيقيم بها

This is the circumambulation which is an obligation in the *ḥajj*. Delaying it for more than these [three] days is disapproved. If he delays it beyond that, atonement [by sacrificing an animal] is binding upon him, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[255] may Allah have mercy on them, said that there is nothing due from him [as an atonement]. Then he returns to Minā and stays there.

Ramy – Casting Stones

فإذا زالت الشمس من اليوم الثاني من أيام النحر رمى الجمار الثلاث يبتدئ بالتي تلي المسجد فيرميها بسبع حصيات يكبر مع كل حصاة ثم يقف عندها فيدعو ثم يرمي التي تليها مثل ذلك ويقف عندها ثم يرمي جمرة العقبة كذلك ولا يقف عندها

When the sun declines [from its meridian] on the second day of the days of *naḥr*,[256] one pelts all three *jamrahs*, beginning with the one that is adjacent to the *Masjid [al-Khayf]* casting seven stones at it, proclaiming the *takbīr* with every stone [throw]. Then, he stops next to it and supplicates. After that, he pelts the one next to it in the same way and stops beside it [to supplicate]. Then he pelts the *jamarat al-'aqabah* in the same way, but he should not stop next to it.

فإذا كان من الغد رمى الجمار الثلاث بعد زوال الشمس كذلك

The following day,[257] he pelts the three *jamrahs* after the declination of

the sun [from the meridian], in the same way.

و إذا أراد أن يتعجل النفر نفر إلى مكة و إن أراد أن يقيم رمى
الجمار الثلاث في اليوم الرابع بعد زوال الشمس كذلك

Whenever he wishes to hasten the return, he returns to Makkah, but if he wishes to stay [at Minā for another night], then he pelts the three *jamrahs* on the fourth day,[258] after the declination of the sun [from the meridian], in the same way.

فإن قدم الرمي في هذا اليوم قبل الزوال بعد طلوع الفجر جاز
عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : لا يجوز

If he advances the casting [of stones] on this day[259] to before the declining of the sun [and] after the dawning of *fajr*, it is permitted, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[260] may Allah have mercy on them, said it is not permissible.[261]

و يكره أن يقدم الإنسان ثقله إلى مكة و يقيم بها حتى يرمي

It is disapproved for someone to send his luggage to Makkah while [he himself] stays on until he has cast [all the stones].

Ṭawāf aṣ-Ṣadr – Farewell Circumambulation[262]

فإذا نفر إلى مكة نزل بالمحصب ثم طاف بالبيت سبعة أشواط
لا يرمل فيها وهذا طواف الصدر و هو واجب إلا على أهل مكة
ثم يعود إلى أهله

When someone returns to Makkah, he alights at Muḥassab, then he circumambulates the House with seven circuits without performing *ramal* in them. This is the *ṭawāf aṣ-ṣadr* – farewell circumambulation – and it is incumbent [on all] except for the residents of Makkah. After that, he returns to his household.

Miscellaneous Issues Pertaining to *Ḥajj*

فإن لم يدخل المحرم مكة وتوجه إلى عرفات ووقف بها على ما قدمناه سقط عنه طواف القدوم ولا شيء عليه لتركه

If the person in *iḥrām* does not enter Makkah, but heads [directly] towards ‘Arafāt, and stands there according to the manner we have mentioned earlier, the [obligation of] *ṭawāf al-qudūm* falls from him, and there is nothing [due as atonement] from him for omitting it.

ومن أدرك الوقوف بعرفة ما بين زوال الشمس من يوم عرفة إلى طلوع الفجر من يوم النحر فقد أدرك الحج

Whoever reaches the staying at ‘Arafah between the declining of the sun [from its meridian] on the day of ‘Arafah until the dawning of the *fajr* on the day of sacrifice *(naḥr)*, has secured the *ḥajj*.

ومن اجتاز بعرفة وهو نائم أو مغمى عليه أو لم يعلم أنها عرفات أجزأه ذلك عن الوقوف

Whoever passes through ‘Arafah while asleep or unconscious, or unaware that it was ‘Arafāt, that suffices for him [with respect to the obligation] of staying [at ‘Arafāt].

والمرأة في جميع ذلك كالرجل غير أنها لا تكشف رأسها وتكشف وجهها ولا ترفع صوتها بالتلبية ولا ترمل في الطواف ولا تسعى بين الميلين الأخضرين ولا تحلق ولكن تقصر

The woman, in all of that is like the man, except that she does not uncover her head, although she does unveil her face.

She does not raise her voice with the *talbiyah*, or perform the *ramal* in the circumambulation, or perform the *sa‘y* between the two green lines, nor does she shave [her head], but she clips [her hair].

باب القران

QIRĀN

القران أفضل عندنا من التمتع والإفراد

According to us, *qirān* is better than *tamattu‘* and *ifrād*.

وصفة القران: أن يهمل بالعمرة والحج معا من الميقات

The description of *qirān* is that one adopts the *iḥrām* for *‘umrah* (lesser pilgrimage) and for *ḥajj* simultaneously, from the *mīqāt.*

ويقول عقيب الصلاة : اَللَّهُمَّ إِنِّي أُرِيدُ الْحَجَّ وَالْعُمْرَةَ فَيَسِّرْهُمَا لِي وَتَقَبَّلْهُمَا مِنِّي

Following the prayer [of two units], one says: “ *Allāhumma innī urīdu’l-ḥajja wa’l-‘umrata, fa yassir-humā lī, wa taqabbal-humā minnī* – O Allah, I intend to perform *ḥajj* and *‘umrah,* so make them easy for me and accept them from me.”

فإذا دخل مكة ابتدأ بالطواف فطاف بالبيت سبعة أشواط يرمل في الثلاث الأول منها ويمشي في ما بقي على هينته وسعى بعدها بين الصفا والمروة وهذه أفعال العمرة

When he enters Makkah, he begins with the circumambulation, circumambulating the House in seven circuits, performing *ramal* in the first three of them, and walking in the remainder at his normal gait. After that, he performs *sa‘y* between Ṣafā and Marwah. These are the actions of *‘umrah.*

ثم يطوف بعد السعي طواف القدوم ويسعى بين الصفا والمروة للحج كما بيناه في حق المفرد

Thereafter, after *sa‘y,* he circumambulates performing the *ṭawāf al-qudūm.* He performs *sa‘y* between Ṣafā and Marwah for *ḥajj,* just as we have explained with respect to someone performing *ifrād.*

فإذا رمى الجمرة يوم النحر ذبح شاة أو بقرة أو بدنة أوسبع بدنة أوسبع بقرة فهذا دم القران، فإن لم يكن له ما يذبح صام ثلاثة أيام في الحج آخرها يوم عرفة فإن فاته الصوم حتى يدخل يوم النحر لم يجزه إلا الدم ثم يصوم سبعة أيام إذا رجع إلى أهله فإن صامها بمكة بعد فراغه من الحج جاز

When someone pelts the *jamrat [al-‘aqabah]* on the day of sacrifice

(naḥr), he slaughters a goat, a cow, or a camel *(badanah)*,[263] or [gives] one-seventh of a camel (*badanah*) or one-seventh of a cow. This, is the sacrifice *(dam)* of *qirān*. If, however, he does not possess anything to slaughter, he should fast three days during the *ḥajj*, the last of which is the day of ‘Arafah.[264] If he delays the fast until the day of *sacrifice (naḥr)* falls [due], then nothing is valid for him other than sacrifice of an animal (*dam*).[265] Then he fasts seven days when he returns to his household, but if he fasts them in Makkah after finishing the *ḥajj*, it is valid.

فإن لم يدخل القارن بمكة وتوجه إلى عرفات فقد صار رافضا لعمرته بالوقوف وسقط عنه دم القران وعليه دم لرفض العمرة وعليه قضاؤها

If someone performing *qirān*[266] does not enter Makkah but heads [directly] to ‘Arafāt, he becomes someone who leaves his *‘umrah* by standing [at ‘Arafah], and the sacrifice of an animal of *qirān* lapses from him, but sacrifice of an animal for leaving the *‘umrah* is due from him, and so is [making up the *‘umrah* in] *qaḍā’*.[267]

باب التمتع

TAMATTU‘

التمتع أفضل من الإفراد عندنا، والتمتع على وجهين: متمتع يسوق الهدي ومتمتع لا يسوق الهدي

According to us, *tamattu‘* is better than *ifrād.*

The *mutamatti‘* (person who performs *tamattu‘)* is of two types: the *mutamatti‘* who drives the *hady* (sacrificial animal as offering for the *ḥajj),* and the *mutamatti‘* who does not drive the *hady*.

وصفة التمتع: أن يبتدئ من الميقات فيحرم بالعمرة ويدخل مكة فيطوف لها ويسعى ويحلق أو يقصر وقد حل من عمرته

The description of *tamattu‘* is that one begins at the *mīqāt,* [where he] adopts the *iḥrām* for *‘umrah* and then enters Makkah, and performs the circumambulation for it *(‘umrah)*, does *sa‘y* and shaves [his head] or clips

[his hair], at which point he is released from his *‘umrah.*

ويقطع التلبية إذا ابتدأ بالطواف ويقيم بمكة حلالا

He discontinues the *talbiyah* when he begins the circumambulation, and remains in Makkah free from *iḥrām.*

فإذا كان يوم التروية أحرم بالحج من المسجد الحرام وفعل ما يفعله الحاج المفرد وعليه دم التمتع فإن لم يجد ما يذبح صام ثلاثة أيام في الحج وسبعة إذا رجع إلى أهله

On the day of *tarwiyah,* he should adopt *iḥrām* for *ḥajj* from the *al-Masjid al-Ḥarām.* He should do whatever the one performing the *ḥajj ifrād* does, and the sacrifice of an animal *(dam)* of *tamattu‘* is due from him, but if he does not find that which he can slaughter, he should fast three days during the *ḥajj,* and seven when he returns to his household.

وإن أراد المتمتع أن يسوق الهدي أحرم وساق هديه فإن كانت بدنة قلدها بمزادة أو نعل وأشعر البدنة عند أبي يوسف ومحمد رحمهما الله تعالى وهو : أن يشق سنامها من الجانب الأيمن، ولا يشعر عند أبي حنيفة رحمه الله تعالى

When the *mutamatti‘* wants to drive the *hady,* he should adopt the *iḥrām,* and [then] drive his *hady.* If it is a camel *(badanah),* he should garland its neck with a leather water-bag or a sandal. He should mark *(ish‘ār)* the camel, according to Abū Yūsuf and Muḥammad, may Allah have mercy on them, and that is to slit its hump from the right side, but according to Abū Ḥanīfah, may Allah have mercy on him, he should not mark [it].

فإذا دخل مكة طاف وسعى ولم يحلل حتى يحرم بالحج يوم التروية فإن قدم الإحرام قبله جاز وعليه دم التمتع فإذا حلق يوم النحر فقد حل من الإحرامين

When he enters Makkah, he performs the circumambulation and *sa‘y.* He does not become free [of the restrictions of *iḥrām]* until he has worn it for the *ḥajj* on the day of *tarwiyah.*

If he advances the adopting of *iḥrām* prior to that [day of *tarwiyah],* it is

valid, and the sacrifice of an animal *(dam)* of *tamattu‘* is due from him. When he shaves [his head] on the day of sacrifice *(naḥr)* he has become free of both *iḥrāms.*

وليس لأهل مكة تمتع ولا قران و إنما لهم الإفراد خاصة

There is no *[ḥajj] tamattu‘* or *qirān* for residents of Makkah, and for them there is only *ifrād.*

و إذا عاد المتمتع إلى بلده بعد فراغه من العمرة ولم يكن ساق الهدي بطل تمتعه

If the *mutamatti‘* returns to his land after he is free from his *‘umrah* without driving the *hady,* his *tamattu‘* is void.

ومن أحرم بالعمرة قبل أشهر الحج فطاف لها أقل من أربعة أشواط ثم دخلت أشهر الحج فتممها وأحرم بالحج كان متمتعا

Whoever adopts *iḥrām* for *‘umrah* prior to the months of *ḥajj* and performs less than four circuits of circumambulation and then the months of *ḥajj* begin and he completes them[268] and adopts *iḥrām* for *ḥajj,* is a *mutamatti‘.*

فإن طاف لعمرته قبل أشهر الحج أربعة أشواط فصاعدا ثم حج من عامه ذلك لم يكن متمتعا

If he circumambulates four circuits or more for his *‘umrah* before the months of *ḥajj,* then performs *ḥajj* that same year of his, he is not a *mutamatti‘.*

وأشهر الحج : شوال وذو القعدة وعشر من ذي الحجة، فإن قدم الإحرام بالحج عليها جاز إحرامه وانعقد حجه

The months of *ḥajj* are Shawwāl, Dhu’l-Qa‘dah and the [first] ten [days] of Dhu’l-Ḥijjah.

If someone advances the [adoption of the] *iḥrām* for *ḥajj* prior to them, his *iḥrām* is valid and his *ḥajj* can be performed.

و إذا حاضت المرأة عند الإحرام اغتسلت وأحرمت وصنعت
كما يصنع الحاج غير أنها لا تطوف بالبيت حتى تطهر، و إذا
حاضت بعد الوقوف بعرفة وبعد طواف الزيارة انصرفت من
مكة ولا شيء عليها لترك طواف الصدر

When a woman begins menstruating during her *iḥrām,* she takes a bath, dons the *iḥrām* and does whatever the person performing *ḥajj* does, except that she does not circumambulate the House until she becomes pure. If she begins menstruating after the standing at ʻArafah, and after the *ṭawāf az-ziyārah,* she may leave Makkah and there is nothing due from her for leaving the *ṭawāf aṣ-ṣadr*.

باب الجنايات في الحج

OFFENCES *(JINĀYĀT)* DURING *ḤAJJ*

إذا تطيب المحرم فعليه الكفارة فإن تطيب عضوا كاملا فما زاد
فعليه دم و إن تطيب أقل من عضو فعليه صدقة

If the person in *iḥrām* applies perfume, then expiation is due from him. If he applies perfume to a complete limb or to what is more than that, then sacrifice of an animal *(dam)* is due from him, and if he perfumes less than a limb, then charity[269] *(ṣadaqah)* is due from him.

و إن لبس ثوبا مخيطا أو غطى رأسه يوما كاملا فعليه دم و إن
كان أقل من ذلك فعليه صدقة

If someone wears a sewn garment or covers his head for a whole day, then sacrifice of an animal *(dam)* is due from him, but if it is less than that [period of time],[270] then charity is due from him.

و إن حلق ربع رأسه فصاعدا فعليه دم و إن حلق أقل من الربع
فعليه صدقة

If one shaves a quarter of his head or more, then sacrifice of an animal *(dam)* is due from him, but if he shaves less than a quarter, then charity is due from him.

و إن حلق موضع المحاجم من الرقبة فعليه دم عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى : صدقة

If someone shaves the cupping area of the neck, then sacrifice of an animal is due from him, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that *ṣadaqah* [is due from him].

و إن قص أظافير يديه ورجليه فعليه دم، و إن قص يدا أو رجلا فعليه دم و إن قص أقل من خمسة أظافيرفعليه صدقة و إن قص أقل من خمسة أظافير متفرقة من يديه ورجليه فعليه صدقة عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى : عليه دم

If someone clips the fingernails of both hands and the toenails of both feet, then sacrifice of an animal is due from him, and if he clips the fingernails of one hand and the toenails of one foot, then sacrifice of an animal is due from him. If he clips less than five different nails from his hands and his feet, then charity is due from him, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said sacrifice of an animal is due from him.

و إن تطيب أو حلق أو لبس من عذر فهو مخير : إن شاء ذبح شاة و إن شاء تصدق على ستة مساكين بثلاثة أصوع من طعام و إن شاء صام ثلاثة أيام

If someone applies perfume, shaves [his head] or wears a sewn garment with a [valid] excuse, then he is given a choice: if he wishes, he may slaughter a sheep or goat, or if he wishes, he may give charity to six needy persons of three *ṣā'*s of food,[271] or if he wishes, he may fast for three days.

Conjugal Relations

و إن قبل أو لمس بشهوة فعليه دم أنزل أو لم ينزل

If someone kisses [his wife][272] or fondles [her] with desire, then sacrifice of an animal is due from him, whether he ejaculates or not.

ومن جامع في أحد السبيلين قبل الوقوف بعرفة فسد حجه وعليه
شاة ويمضي في الحج كما يمضي من لم يفسد حجه وعليه القضاء،
وليس عليه أن يفارق امرأته إذا حج بها في القضاء عندنا

Whoever copulates in either of the passages[273] before standing at ‘Arafah, his *ḥajj* is invalidated and a sheep or goat is due from him [as penalty]. He must continue the [remainder of the] *ḥajj* in the same way that someone whose *ḥajj* is not invalid continues, and *qaḍā’* [of *ḥajj]* is due from him.

According to us, it is not incumbent on him to separate from his wife when he performs the *ḥajj* as *qaḍā’*.

ومن جامع بعد الوقوف بعرفة لم يفسد حجه وعليه بدنة، ومن
جامع بعد الحلق فعليه شاة، ومن جامع في العمرة قبل أن يطوف
أربعة أشواط أفسدها ومضى فيها وقضاها وعليه شاة، و إن وطئ
بعد ما طاف أربعة أشواط فعليه شاة ولا تفسد عمرته ولا يلزمه
قضاؤها، ومن جامع ناسيا كمن جامع عامدا في الحكم

Whoever has sexual intercourse after standing at ‘Arafah, his *ḥajj* is not invalidated, but a camel *(badanah)* is due from him. Whoever has sexual intercourse after shaving [his head], a sheep or goat is due from him. Whoever has sexual intercourse during *‘umrah*, before he has circumambulated [a minimum of] four circuits, has invalidated it, but he should continue with it [as normal] and [then] perform it as *qaḍā’*, and a sheep or goat is due from him. If he has sexual intercourse after he has circumambulated [a minimum of] four circuits, then a sheep or goat is due from him and his *‘umrah* is not invalidated, and neither is its *qaḍā’* incumbent upon him.[274]

Whoever has sexual intercourse out of forgetfulness has the same legal ruling as someone who has intentionally [engaged in] sexual intercourse.

Impurity

ومن طاف طواف القدوم محدثا فعليه صدقة و إن كان جنبا فعليه
شاة و إن طاف طواف الزيارة محدثا فعليه شاة و إن كان جنبا فعليه
بدنة والأفضل أن يعيد الطواف ما دام بمكة ولا ذبح عليه، ومن
طاف طواف الصدر محدثا فعليه صدقة و إن كان جنبا فعليه شاة

Whoever performs the *ṭawāf al-qudūm* in a state of minor ritual impurity then charity is due from him, and if he was in a state of major ritual impurity then a sheep or goat is due from him.

If someone performs the *ṭawāf az-ziyārah* in a state of minor ritual impurity, a sheep or goat is due from him, and if he is in a state of major ritual impurity, then a camel *(badanah)* is due from him. It is better for him to repeat the circumambulation as long as he is in Makkah, and no slaughter is due upon him.

Whoever performs the *ṭawāf aṣ-ṣadr* in a state of minor ritual impurity, charity is due from him, and if he is in a state of major ritual impurity, then a sheep or goat is due from him.

Shortcomings

و إن ترك طواف الزيارة ثلاثة أشواط فما دونها فعليه شاة و إن
ترك منه أربعة أشواط فصاعدا بقي محرما أبدا حتى يطوفها

If someone omits three circuits or less than that from the *ṭawāf az-ziyārah*, a sheep or goat is due from him, and if he leaves out four circuits or more, he remains in *iḥrām* forever until he performs their circumambulation.

ومن ترك ثلاثة أشواط من طواف الصدر فعليه صدقة، و إن
ترك طواف الصدر أو أربعة أشواط منه فعليه شاة

Whoever omits [a maximum of] three circuits from the *ṭawāf aṣ-ṣadr*, charity is due from him, and if he omits [all of] the *ṭawāf aṣ-ṣadr*, or [a minimum of] four circuits from it, then a sheep or goat is due from him.

ومن ترك السعي بين الصفا والمروة فعليه شاة وحجه تام

Whoever omits the *sa'y* between Ṣafā and Marwah, then a sheep or goat is due from him, and his *ḥajj* is complete.

ومن أفاض من عرفات قبل الإمام فعليه دم، ومن ترك الوقوف بالمزدلفة فعليه دم

Whoever moves out of ‘Arafāt before the Imam, the sacrifice of an animal is due from him.

Whoever omits the staying at Muzdalifah, the sacrifice of an animal is due from him.

ومن ترك رمي الجمار في الأيام كلها فعليه دم، وإن ترك رمي إحدى الجمار الثلاث فعليه صدقة، وإن ترك رمي جمرة العقبة في يوم النحر فعليه دم

Whoever omits pelting the *jamrah* for all of the days, the sacrifice of an animal is due from him. If he omits pelting any one of these three *jamrahs*, then *ṣadaqah* is due from him. If he omits pelting the *jamrat al-aqabah* on the day of sacrifice *(naḥr),* then the sacrifice of an animal is due from him.

ومن أخر الحلق حتى مضت أيام النحر فعليه دم عند أبي حنيفة رحمه الله تعالى وكذلك إن أخر طواف الزيارة عند أبي حنيفة رحمه الله تعالى

Whoever delays shaving [the head] until the days of sacrifice have passed, sacrifice of an animal is due from him, according to Abū Ḥanīfah, may Allah have mercy on him, and likewise, if he delays the *ṭawāf az-ziyārah,* according to Abū Ḥanīfah, may Allah have mercy on him.

Hunting

وإذا قتل المحرم صيدا أو دل عليه من قتله فعليه الجزاء سواء في ذلك العامد والناسي والمبتدئ والعائد

When a person in *iḥrām* kills game or he guides someone who kills it to it then recompense is due from him. In this matter, the deliberate, the forgetful, the first-time [offender] and the repeat [offender] are [all] deemed the same.

والجزاء عند أبي حنيفة وأبي يوسف رحمهما الله تعالى: أن يقوم الصيد
في المكان الذي قتله فيه أو في أقرب المواضع منه، إن كان في برية يقومه
ذوا عدل ثم هو مخير في القيمة، إن شاء ابتاع بها هديا فذبحه إن بلغت
قيمته هديا، و إن شاء اشترى بها طعاما فتصدق به على كل مسكين
نصف صاع من بر أو صاعا من تمر أو صاعا من شعير، و إن شاء صام
عن كل نصف صاع من بر يوما وعن كل صاع من شعير يوما

According to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, the recompense is that the game is valued at the place where it was killed or the location closest to it. If it was in the wild, two equitable persons value it.

Then he has a choice with regards to its pricing: if he wants, he may purchase an offering *(hady)* and slaughter it if the value is that of an offering, or if he wants, he may buy food with it and give it as charity to the destitute, each [receiving] a half *ṣāʿ* of wheat, a *ṣāʿ* of dates, or a *ṣāʿ* of barley, or if he wants, he may fast one day for every half *ṣāʿ* of wheat, or one day for every *ṣāʿ* of barley.

فإن فضل من الطعام أقل من نصف صاع فهو مخير: إن شاء تصدق
به و إن شاء صام عنه يوما كاملا، وقال محمد رحمه الله تعالى: يجب
في الصيد النظير فيما له نظير ففى الظبي شاة وفى الضبع شاة وفى
الأرنب عناق وفى النعامة بدنة وفى اليربوع جفرة

If there is a surplus of food of less than half a *ṣāʿ*, then he has a choice; if he wants, he may give it as charity, and if he wants, he may fast for it a whole day[275]

Muḥammad, may Allah have mercy on him, said that for [the offence of hunting] game, it is obligatory, [to pay a recompense] similar to what resembles it if possible. Thus, for a deer it is a sheep or goat, for a hyena it is [also] a sheep or goat, for a rabbit it is a female kid, for an ostrich it is a *badanah*, for a jerboa it is a four-month old female kid.

ومن جرح صيدا أو نتف شعره أو قطع عضوا منه ضمن ما نقص من قيمته، و إن نتف ريش طائر أو قطع قوائم صيد فخرج من حيز الامتناع فعليه قيمته كاملة

Whoever injures game, plucks its hair or cuts off one of its limbs, is to compensate [for] whatever he has reduced in its value. If he plucks the feathers of a bird or cuts the legs of the game [in such that] it exits from the category of one that can defend itself, then upon him there is [liability for] its entire value.

ومن كسر بيض صيد فعليه قيمته، فإن خرج من البيضة فرخ ميت فعليه قيمته حيا

Whoever breaks the egg of game, its value is due from him. If a dead chick emerges from that egg, then from him there is due its value as though it was alive.

وليس في قتل الغراب والحدأة والذئب والحية والعقرب والفأرة والكلب العقور جزاء، وليس في قتل البعوض والبراغيث والقراد شيء

There is no recompense [to be paid] for killing a crow, kite, wolf, snake, scorpion, mouse or savage dog, and there is nothing [as liability] for killing mosquitoes, fleas or ticks.

ومن قتل قملة تصدق بما شاء ومن قتل جرادة تصدق بما شاء وتمرة خير من جرادة

Whoever kills a louse may give in charity whatever he likes, and [similarly] whoever kills a locust may [also] give in charity whatever he likes, and [in this regard] one date is better than a locust.

ومن قتل ما لا يؤكل لحمه من السباع ونحوها فعليه الجزاء ولا يتجاوز بقيمتها شاة

Whoever kills that whose meat is not eaten, like a predator and the likes of it, then recompense is due from him, and its value shall not exceed [that of] a sheep or goat.

و إن صال السبع على محرم فقتله فلا شيء عليه

If a beast attacks someone in *iḥrām* and he kills it [in self-defence], there is nothing [as liability] upon him.

و إن اضطر المحرم إلى أكل لحم الصيد فقتله فعليه الجزاء

If someone in *iḥrām* is forced by necessity into eating the meat of game and he kills it, he [is liable to pay] recompense.

ولا بأس بأن يذبح المحرم الشاة والبقرة والبعير والدجاج والبط الكسكري

There is no objection to someone in *iḥrām* slaughtering a goat, cow, camel, chicken or domestic duck.

و إن قتل حماما مسرولا أو ظبيا مستأنسا فعليه الجزاء

If someone kills a pigeon with feathered legs or a domesticated deer, then recompense is due from him.

و إن ذبح المحرم صيدا فذبيحته ميتة لا يحل أكلها

If the person in *iḥrām* slaughters game, then his slaughtered animal is carrion which it is not lawful to eat.

ولا بأس بأن يأكل المحرم لحم صيد اصطاده حلال و ذبحه إذا لم يدله المحرم عليه ولا أمره بصيده

There is no objection if the person in *iḥrām* eats the meat of game if it was hunted by someone not in *iḥrām* and [the hunter] slaughters it, if the person in *iḥrām* did not direct him to it nor did he tell him to hunt it.

وفي صيد الحرم إذا ذبحه الحلال الجزاء

For game of the Ḥaram, if a person not in *iḥrām* slaughters it, [then he shall be liable for] payment of recompense.

و إن قطع حشيش الحرم أو شجره الذي ليس بمملوك ولا هو مما ينبته الناس فعليه قيمته

If someone cuts the grass of the Ḥaram, or a tree which is not owned [by a legal entity], nor is it of what people grow, then [the payment of] its value is due from him.

وكل شيء فعله القارن مما ذكرنا أن فيه على المفرد دما فعليه دمان: دم لحجته ودم لعمرته إلا أن يتجاوز الميقات من غير إحرام ثم يحرم بالعمرة والحج فيلزمه دم واحد

Everything that the performer of *qirān* does, out of what we have mentioned in which there is, from the performer of *ifrād* due one animal in sacrifice *(dam),* then there is due from [the person doing *qirān]* two animals in sacrifice; one animal sacrificed for his *ḥajj* and one animal sacrificed for his *‘umrah,*[276] unless he crosses the *mīqāt* without [wearing] *iḥrām,* and thereafter dons *iḥrām* for *‘umrah* and *ḥajj,* [in which case only] one animal is due in sacrifice from him.

و إذا اشترك محرمان في قتل صيد الحرم فعلى كل واحد منهما الجزاء كاملا، و إذا اشترك حلالان في قتل صيد الحرم فعليهما جزاء واحد

When two people in *iḥrām* participate in killing game of the Ḥaram, a full recompense is due from each of the two, but if two persons who are not in *iḥrām* participate in killing game of the Ḥaram, [only] one recompense is due from them both.

و إذا باع المحرم صيدا أو ابتاعه فالبيع باطل

When the person in *iḥrām* sells game or purchases it, the sale is void.

باب الإحصار

IḤṢĀR – CONFINEMENT

إذا أحصر المحرم بعدو أو أصابه مرض يمنعه من المضي جاز له التحلل وقيل له : ابعث شاة تذبح في الحرم وواعد من يحملها يوما بعينه يذبحها فيه ثم تحلل فإن كان قارنا بعث بدمين

When the person in *iḥrām* is held back by an enemy, or an illness befalls him that prevents him from continuing [his *ḥajj* rites], it is permissible for

him to release [himself from the *iḥrām],* and it is said to him: “Send a sheep or goat to be slaughtered in the Ḥaram.” He takes an undertaking from someone who will take it on a specific day in which it is to be slaughtered, then he releases himself from the *iḥrām.*

If he is performing *qirān,* he should send two animals to be sacrificed.[277]

ولا يجوز ذبح دم الإحصار إلا في الحرم ويجوز ذبحه قبل يوم
النحر عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : لا
يجوز الذبح للمحصر بالحج إلا في يوم النحر

Slaughtering an animal *(dam)* for having been kept back *(iḥṣār)* is not permitted [anywhere] but in the Ḥaram. According to Abū Ḥanīfah, may Allah have mercy on him, its slaughter is permitted prior to the day of sacrifice *(naḥr),* but they,[278] may Allah have mercy on them, said that slaughtering on behalf of the person who has been held back *(muḥṣar* – person in *iḥrām* in *iḥṣār)* intending *ḥajj* is not permitted except on the day of sacrifice *(naḥr).*

ويجوز للمحصر بالعمرة أن يذبح متى شاء

It is permissible for the person who has been held back from *‘umrah* to slaughter whenever he wants.

والمحصر بالحج إذا تحلل فعليه حجة وعمرة وعلى المحصر
بالعمرة القضاء وعلى القارن حجة وعمرتان

When the person who has been held back from *ḥajj* releases himself from *iḥrām,* one *ḥajj* and one *‘umrah* are due from him, and the person who has been held back intending *‘umrah* is due to perform *qaḍā’.*

One *ḥajj* and two *‘umrahs* are due from the person performing *qirān.*[279]

وإذا بعث المحصر هديا وواعدهم أن يذبحوه في يوم بعينه ثم
زال الإحصار، فإن قدر على إدراك الهدي والحج لم يجز له التحلل
ولزمه المضي، وإن قدر على إدراك الهدي دون الحج تحلل، وإن
قدر على إدراك الحج دون الهدي جاز له التحلل استحسانا

When the person who has been held back sends an offering *(hady)* and

takes an undertaking from them[280] that they slaughter it on a specific day, and then the condition of being held back ends, if he is able to catch up to the offering and [also] the *ḥajj*, he is not permitted to release himself from the *iḥrām*, and executing [the *ḥajj* and sacrifice] is binding upon him. If he is able to catch up to the offering but not the *ḥajj*, then he releases himself from the *iḥrām*. If, however, he is able to catch up to the *ḥajj* but not the offering, it is permitted for him to release himself from the *iḥrām*, on the basis of *istiḥsān* (juristic preference).

ومن أحصر بمكة وهو ممنوع عن الوقوف والطواف كان محصرا
وإن قدر على إدراك إحدهما فليس بمحصر

Whoever is held back at Makkah and is prevented from the standing [at ʻArafah] and circumambulation [of the Kaʻbah], is [understood to be] a *muḥṣar*,[281] but if he is able to catch up to either one of the two,[282] then he is not a *muḥṣar*.

باب الفوات

LOST RITES

ومن أحرم بالحج ففاته الوقوف بعرفة حتى طلع الفجر من يوم
النحر فقد فاته الحج وعليه أن يطوف ويسعى وتحلل ويقضي
الحج من قابل ولا دم عليه

Whoever adopts the *iḥrām* of *ḥajj* and then misses the standing at ʻArafah until the sun rises on the day of sacrifice *(naḥr)*, has missed the *ḥajj*, and must perform the circumambulations, the *saʻy* and release himself from the *iḥrām*. [He is to] perform the *ḥajj* as *qaḍā’* in the following year, and there is no sacrifice of an animal *(dam)* due from him.

والعمرة لا تفوت وهي جائزة في جميع السنة إلا خمسة أيام يكره
فعلها فيها : يوم عرفة ويوم النحر وأيام التشريق

The *ʻumrah* cannot be missed and it is permitted during the whole year, except the five days during which its performance is disapproved: the day of ʻArafah, the day of sacrifice *(naḥr)*, and the three days of *tashrīq*.

والعمرة سنة وهي : الإحرام والطواف والسعي

‘Umrah is sunnah. It [consists of] *iḥrām,* circumambulation and *sa‘y.*

باب الهدي

OFFERING *(HADY)*

الهدي : أدناه شاة، وهو من ثلاثة أنواع من : الإبل والبقر والغنم يجزئ في ذلك كله الثني فصاعدا إلا من الضأن فإن الجذع منه يجزئ فيه

The minimum offering *(hady)* is a sheep or goat, and it is of three kinds: camels, cows, sheep and goats.

In all of these, a two-year old or older is sufficient, except in [the case of] sheep [in which] a six-month old lamb is sufficient.

ولا يجوز في الهدي مقطوع الأذن ولا أكثرها ولا مقطوع الذنب ولا مقطوع اليد ولا الرجل ولا ذاهبة العين ولا العجفاء ولا العرجاء التي لا تمشي إلى المنسك

The offering is not permitted [if] its [whole] ear or the major part of it is severed, the tail is severed, the hand is severed, the foot [is severed], or one with impaired eyesight, which is emaciated, or lame that does not walk [all the way] to the place of the rite [of sacrifice].

والشاة جائزة في كل شيء إلا في موضعين : من طاف طواف الزيارة جنبا ومن جامع بعد الوقوف بعرفة فإنه لا يجوز فيهما إلا بدنة

The sheep or goat is permitted [to be slaughtered] for everything except in two cases: someone who performs the *ṭawāf az-ziyārah* while *junub,* and someone who has sexual intercourse after standing at ‘Arafah. In these two cases, nothing is allowed but a camel *(badanah).*

والبدنة والبقرة يجزئ كل واحدة منهما عن سبعة أنفس إذا كان كل واحد من الشركاء يريد القربة فإذا أراد أحدهم بنصيبه اللحم لم يجز للباقين عن القربة

[With regards to] the *badanah* and the cow, either of the two can be portioned on behalf of seven people, if each of the participants intends it as an act of drawing closer[283] [to Allah]. If any of them wants his share of the meat, it is not valid for the rest[284] as an act of drawing closer *(qurbah).*

ويجوز الأكل من هدي التطوع والمتعة والقران ولا يجوز من
بقية الهدايا

Consuming [the meat] from the offering which is done as a voluntary act *(taṭawwu‘),* or for *tamattu*‘ and *qirān* is permissible, but it is not permitted from the rest of the offerings.

ولا يجوز ذبح هدي التطوع والمتعة والقران إلا في يوم النحر
ويجوز ذبح بقية الهدايا في أي وقت شاء

Slaughtering the offering which is done as a voluntary act, or for *tamattu*‘ and *qirān* is not permitted except on the day of sacrifice (*naḥr*). Slaughtering the rest of the offerings is permissible at any time one wants.

ولا يجوز ذبح الهدايا إلا في الحرم، ويجوز أن يتصدق بها على
مساكين الحرم وغيرهم ولا يجب التعريف بالهدايا

Slaughtering the offerings is not permitted except in the Ḥaram.

It is permissible to give it away as charity to the needy of the Ḥaram and to others, and notification of the offering is not obligatory.

والأفضل بالبدن النحر وفي البقر والغنم الذبح

In the case of camels, stabbing at the base of the neck *(naḥr)* is better, and in the case of cows and sheep, slaughtering *(dhabḥ)*[285] is better.

والأولى أن يتولى الإنسان ذبحها بنفسه إذا كان يحسن ذلك
ويتصدق بجلالها وخطامها ولا يعطي أجرة الجزار منها

It is preferable for someone to undertake the slaughtering of [the animal] himself, if he is able to do that well and to give its coverings and its bridles away in charity, but he should not give them as remuneration to the butcher.[286]

ومن ساق بدنة فاضطر إلى ركوبها ركبها و إن استغنى عن ذلك لم يركبها و إن كان لها لبن لم يحلبها ولكن ينضح ضرعها بالماء البارد حتى ينقطع اللبن

Whoever drives a camel *(badanah)* and is compelled to ride it may do so, but if he has no need to do that, then he does not ride it. If it has milk [lactating from its udder], he does not milk it, but rather, he sprinkles its udder with cold water until the milk ceases [to flow].

ومن ساق هديا فعطب فإن كان تطوعا فليس عليه غيره و إن كان عن واجب فعليه أن يقيم غيره مقامه

Whoever drives an offering and it perishes, then if it was supererogatory another one is not due from him, but if it was for an obligation, then it is incumbent upon him to replace it with another.

و إن أصابه عيب كثير أقام غيره مقامه وصنع بالمعيب ما شاء

If it suffered many defects, he should replace it with another, and he may do whatever he wants with the defective [animal].

و إذا عطبت البدنة في الطريق فإن كان تطوعا نحرها وصبغ نعلها بدمها وضرب بها صفحتها ولم يأكل منها هو ولا غيره من الأغنياء

If the camel *(badanah)* perishes along the way; if it was supererogatory, then he slaughters it [at the base of its neck], colours its garland with its blood and strikes its side with [the garland]. Neither he and nor anyone else from [amongst] the people who have no need eat of it.

و إن كانت واجبة أقام غيرها مقامها وصنع بها ما شاء

If it was obligatory, he replaces it with another, and he does whatever he likes with [the one that has perished].

ويقلد هدي التطوع والمتعة والقران ولا يقلد دم الإحصار ولا دم الجنايات

One garlands the neck of the supererogatory offering, the [offering of] *tamattu‘* and [that of] *qirān,* but one does not garland the neck of the animal

sacrificed *(dam)* because of being held back *(iḥṣār)* or the animal sacrificed *(dam)* for offences.

كتاب البيوع

BAY' – SALES

THE CONDITIONS OF SALE

البيع ينعقد بالإيجاب والقبول إذا كانا بلفظ الماضي

Sale *(bay')* is concluded by making an offer and [its] acceptance when they are both [enacted] with words of the past tense.

و إذا أوجب أحد المتعاقدين البيع فالآخر بالخيار: إن شاء قبل في المجلس و إن شاء رده

When one of the two contracting parties offers to sell, the other has a choice: if he wishes, he may accept within that session *(majlis al-'aqd)* and if he wishes, he may reject it.[287]

فأيهما قام من المجلس قبل القبول بطل الإيجاب

So, whichever of the two stands [and leaves] that session[288] before the acceptance [of the offer], the offer is void.

فإذا حصل الإيجاب والقبول لزم البيع ولا خيار لواحدٍ منهما، إلا من عيبٍ أو عدم رؤية

Once the offer and acceptance have taken place, the sale has been enacted and neither of the two [parties] has any choice [of rescission][289] except in [the case of] a defect or in [the case of] not having seen [the object of sale].[290]

والأعواض المشار إليها لا يحتاج إلى معرفة مقدارها في جواز البيع

The considerations[291] that are indicated, knowing their quantity is not required in [the stipulations of] the permissibility of the sale.[292]

والأثمان المطلقة لا تصح إلا أن تكون معروفة القدر والصفة

Unspecified prices are not valid unless they are of known quantity and description.[293]

ويجوز البيع بثمن حال ومؤجل إذا كان الأجل معلوما

The sale is permitted with on-the-spot payment or deferred [payment, subject to] when the [period of] deferment is known.[294]

ومن أطلق الثمن في البيع، كان على غالب نقد البلد، فإن كانت
النقود مختلفة فالبيع فاسدٌ، إلا أن يبين أحدها

Whoever does not specify the price *(thaman)* in the sale, it is [determined] according to the predominant currency of the land.[295] If, however, there are different currencies [in the land], the sale is invalid, unless one of them is specified.[296]

ويجوز بيع الطعام والحبوب كلها مكايلة ومجازفة، وبإناءٍ بعينه
لا يعرف مقداره أو بوزن حجر بعينه لا يعرف مقداره

The sale of food and all [types of] seeds is permitted, by measurement or without measurement, with a specific pot, the volume of which is not known, or according to the weight of a specific rock the value of which is not known.[297]

ومن باع صبرة طعام كل قفيز بدرهم جاز البيع في قفيز واحد عند
أبي حنيفة رحمه الله تعالى وبطل في الباقي إلا أن يسمى جملة قفزانها،
وقال أبو يوسف ومحمد رحمهما الله تعالى : يصح في الوجهين

Whoever sells a pile of food, each *qafīz*[298] for one dirham, the sale is permitted for one *qafīz* only, according to Abū Ḥanīfah, may Allah have mercy on him. It is invalid for the rest [of the *qafīzs]* unless he mentions all of its *qafīzs.*[299] Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that it is valid in either case.

ومن باع قطيع غنم كل شاة بدرهم فالبيع فاسد في جميعها، وكذلك من باع ثوبا مذارعة كل ذراع بدرهم ولم يسم جملة الذرعان، ومن ابتاع صبرة طعام على أنها مائة قفيز بمائة درهم فوجدها أقل من ذلك كان المشترى بالخيار: إن شاء أخذ الموجود بحصته من الثمن، و إن شاء فسخ البيع، و إن وجدها أكثرمن ذلك فالزيادة للبائع

Whoever sells a flock of sheep and goats, each sheep or goat for one dirham, the sale is invalid for all of them.[300] And likewise, [it is invalid] if one sells cloth by the cubit *(dhirā')*, each cubit for one dirham and does not nominate the complete [number of] cubits.

Whoever purchases a pile of food for one hundred dirhams, on the presumption that it is one hundred *qafīzs*, then finds it to be less than that, the purchaser has a choice: if he wants, he may take what there is with its share of the price,[301] or if he wants, he may cancel the sale. If he finds it to be more than that, then the excess is for the seller.[302]

ومن اشترى ثوبا على أنه عشرة أذرع بعشرة دراهم أو أرضا على أنها مائة ذراع بمائة درهم فوجدها أقل من ذلك فالمشترى بالخيار: إن شاء أخذها بجملة الثمن، و إن شاء تركها

Whoever buys cloth on the assumption that it is ten cubits [in length], for ten dirhams, or [buys] land on the assumption it is one hundred cubits [in length] for one hundred dirhams, then finds it to be less than that, the buyer has the choice: if he wants, he may take it at the full price [of ten dirhams], or if he wants, he may leave it.

و إن وجدها أكثر من الذراع الذي سماه فهي للمشترى، ولا خيار للبائع

If he finds it to be more than the cubits he had mentioned, then [the excess] is for the buyer and the seller has no choice [but to give it up at that price].

و إن قال بعتكها على أنها مائة ذراع بمائة درهم كل ذراع بدرهم فوجدها ناقصة فهو بالخيار: إن شاء أخذها بحصتها من الثمن و إن شاء تركها

If [the seller] says, "I have sold it to you such that it is one hundred cubits for [the price of] one hundred dirhams, each cubit being for one dirham," and if [the buyer] finds it less [than that], he has the choice: if he wants, he may take of it according to its share of the price, or if he wants, he may leave it.

و إن وجدها زائدة كان المشترى بالخيار إن شاء أخذ الجميع كل ذراع بدرهم، و إن شاء فسخ البيع

If, however, he finds it to be more, then he has the choice: if he wants, he may take it all, [on the basis of] each cubit for one dirham, or if he wants, he may cancel the sale.

ولو قال : بعت منك هذه الرزمة على أنها عشرة أثواب بمأة درهم كل ثوب بعشرة فإن وجدها ناقصة جاز البيع بحصته و إن وجدها زائدة فالبيع فاسد

If [the seller] says, "I have sold you this bale, on the basis that it [consists of] ten pieces of fabric, for one hundred dirhams, each piece of fabric being ten [dirhams]," then if [the buyer] finds them to be less [than that], the sale is permitted according to its share,[303] but if he finds them to be more, then the sale is invalid.

ومن باع دارا دخل بناؤها في البيع و إن لم يسمه، ومن باع أرضا دخل ما فيها من النخل و الشجر في البيع و إن لم يسمه، ولا يدخل الزرع في بيع الأرض إلا بالتسمية

Whoever sells a house, its structure is included in the sale even though [the seller] does not mention it, and whoever sells some land, whatever date-palms and trees are within it are included in the sale, even if [the seller] does not mention them, but crops are not included in the sale of land unless specified.

ومن باع نخلا أو شجرا فيه ثمرة فثمرته للبائع، إلا أن يشترطها المبتاع، و يقال للبائع: اقطعها وسلم المبيع

Whoever sells date-palms or trees upon which there is fruit, its fruit is for the seller, unless the purchaser stipulates it [to include the fruit in the sale] when it is said to the seller, "Pick it, and deliver the sold goods [to the buyer]."

ومن باع ثمرة لم يبد صلاحها أو قد بدأ جاز البيع، ووجب على المشترى قطعها في الحال، فإن شرط تركها على النخل فسد البيع

Whoever sells fruit, [irrespective of whether] its ripening had begun or not, the sale is valid and it is immediately incumbent on the buyer to pick [the fruit], but if he stipulates that it has to be left on the date-palm [or tree], the sale is invalid.

ولا يجوز أن يبيع ثمرة و يستثني منها أرطالا معلومة

It is not permitted for someone to sell fruit and [at the same time] exclude specific measures of it.[304]

ويجوز بيع الحنطة في سنبلها والباقلاء في قشرها

It is permitted to sell wheat in its ear and legume in its pod.

ومن باع دارا دخل في البيع مفاتيح أغلاقها

Whoever sells a house, the keys of its locks are included in the sale.

وأجرة الكيّال وناقد الثمن على البائع، وأجرة وزّان الثمن على المشترى

The wages of the person who measures [out the goods being sold] *(kayyāl)* and of the money-checker *(nāqid ath-thaman)* are [due] from the seller, whereas, the wages of the person who weighs the money[305] *(wazzān ath-thaman)* are [due] from the buyer.

ومن باع سلعة بثمن قيل للمشترى: ادفع الثمن أولا، فإذا دفع قيل للبائع: سلم المبيع

Whoever sells a commodity [in consideration] for a price, it is said to the buyer, "Pay the money first." once he has paid, it is said to the seller, "[Now,] hand over the object of sale [to the buyer]."

ومن باع سلعة بسلعة أو ثمنا بثمن قيل لهما: سلما معا

Whoever barters a commodity for another commodity, or price for price,[306] it is said to both of them, "Hand them over [to each other] simultaneously."

باب خيار الشرط

KHIYĀR ASH-SHARṬ – OPTION STIPULATED IN THE CONTRACT

خيار الشرط جائزٌ في البيع للبائع والمشترى ، ولهما الخيار ثلاثة أيام فما دونها، ولا يجوز أكثر من ذلك عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى: يجوز إذا سمى مدة معلومة

The option stipulated in the contract is permitted in the sale for [both] seller and buyer,[307] and for them, the stipulated option is [valid] for three days or less than that and it is not permitted for more than that according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that it is permitted [for more than three days] when one names a definite period [of time].

وخيار البائع يمنع خروج المبيع من ملكه، فإن قبضه المشترى فهلك بيده في مدة الخيار ضمنه بالقيمة

The option stipulated by the seller prevents the object of sale from leaving his ownership, thus, if the buyer takes possession of it and it perishes in his possession within the period of the stipulated option, [the buyer] compensates [the seller] for its value.[308]

وخيار المشترى لا يمنع خروج المبيع من ملك البائع، إلا أن
المشتري لا يملكه عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف
ومحمد رحمهما الله تعالى: يملكه، فإن هلك بيده هلك بالثمن
وكذلك إن دخله عيبٌ

The option stipulated by the buyer does not prevent the object of sale from leaving the ownership of the seller, but the buyer does not own it [either], according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that [the buyer] does own it. Therefore, if it perishes in his possession, it perishes according to its price [with the buyer], and likewise, if it becomes defective.

ومن شرط له الخيار فله أن يفسخ في مدة الخيار، وله أن يجيزه

Whomsoever the option *(khiyār)* is stipulated for has the right to rescind the sale during the period of option, or he may declare it valid.

فإن أجازه بغير حضرة صاحبه جاز، وإن فسخ لم يجز، إلا أن
يكون الآخر حاضرا

If he considers it valid without the presence of his counterpart,[309] it is valid, but it is not valid for him to cancel it unless the other [party] is present.

وإذا مات من له الخيار بطل خياره، ولم ينتقل إلى ورثته

When the one who has the option dies, his option is void and it does not transfer to his heirs.[310]

ومن باع عبدا على أنه خباز أو كاتب فوجده بخلاف ذلك
فالمشترى بالخيار : إن شاء أخذه بجميع الثمن، وإن شاء تركه

Whoever sells a slave on the understanding that [the slave] is a baker or a scribe, then finds him contrary to that, the buyer has the choice: if he wants, he may take him at the full price, or if he wants, he may leave him.

باب خيار الرؤية

KHIYĀR AR-RU’YAH – PURCHASE SUBJECT TO EXAMINATION

ومن اشترى ما لم يره فالبيع جائزٌ، وله الخيار إذا رآه: إن شاء أخذه، وإن شاء رده

Whoever buys that which he has not seen, the sale is permitted and he has the choice when he does see it: if he wants, he may take it, or if he wants, he may refuse it.

ومن باع ما لم يره فلا خيار له

Whoever sells that which he has not seen, has no choice [in that].[311]

إن نظر إلى وجه الصبرة أو إلى ظاهر الثوب مطويا أو إلى وجه الجارية أو إلى وجه الدابة وكفلها، فلا خيار له

If [the buyer] looks at the exterior of a pile [of foodstuffs], or at the outside of fabric that is folded, or at the face of a slave-woman, or at the face and posterior of a pack-animal, [then buys them] he has no option [to rescind the sale].[312]

وإن رأى صحن الدار فلا خيار له وإن لم يشاهد بيوتها

If he sees the courtyard of a house [and buys the house], he has no option [to rescind the sale], even though he did not see its rooms.

وبيع الأعمى وشراؤه جائزٌ، وله الخيار إذا اشترى، ويسقط خياره بأن يجس المبيع إذا كان يعرف بالجس، أو يشمه إذا كان يعرف بالشم، أو يذوقه إذا كان يعرف بالذوق

Selling and buying by a blind person are allowed. He has the choice [to rescind] when he buys and his [right of] choice ceases: when he handles the commodity – if it becomes known through handling, or he smells it – if it becomes known through smelling, or he tastes it – if it becomes known through tasting.[313]

ولا يسقط خياره في العقار حتى يوصف له

In real estate, the option [to rescind the sale] does not cease until it is described to him.

ومن باع ملك غيره بغير أمره فالمالك بالخيار: إن شاء أجاز البيع،
وإن شاء فسخ، وله الإجازة إذا كان المعقود عليه باقيا والمتعاقدان
بحالهما

Whoever sells another’s property without his permission, the owner has the option: if he wants, he may permit the sale, or if he wants, he may rescind it. [The owner] has [the right] to permit [the sale, only] when the item which is the subject of the contract *(ma‘qūd ‘alayhi)* [still] exists and both the contracting parties are [standing] by their terms.[314]

ومن رأى أحد الثوبين فاشتراهما ثم رأى الآخر جاز له أن يردهما

Whoever sees one of two garments and he buys them both, then sees the other [garment], it is permitted for him to return both of them.

ومن مات وله خيار الرؤية بطل خياره

Whoever dies while holding the [right to] purchase subject to examination, his choice is annulled.[315]

ومن رأى شيئا ثم اشتراه بعد مدة، فإن كان على الصفة التي رآه
فلا خيار له، وإن وجده متغيرا فله الخيار

Whoever sees something and, then buys it after a period [of time], if it is [still] in the condition it was when he saw it then he has no option [to rescind the sale], but if he finds that it has changed, then he has the option [to rescind the purchase].

باب خيار العيب

KHIYĀR AL-‘AYB – OPTION TO RESCIND A SALE DUE TO A BLEMISH

إذا اطلع المشترى على عيب في المبيع فهو بالخيار: إن شاء أخذه
بجميع الثمن، وإن شاء رده

When the buyer becomes aware of a blemish in the goods, he has the choice: if he wants, he may take it [by paying] the complete payment, or if he wants, he may reject it.

وليس له أن يمسكه و يأخذ النقصان

It is not permissible for him to retain it and take a reduction [in price without permission of the seller].

وكل ما أوجب نقصان الثمن في عادة التجار فهو عيب، والإباق والبول في الفراش والسرقة عيب في الصغير ما لم يبلغ، فإذا بلغ فليس ذلك بعيب، حتى يعاوده بعد البلوغ

Everything which necessarily requires a decrease in the price [of the goods] according to the practice of traders, is a blemish. Running away, bedwetting and stealing are blemishes in a minor [slave] until he attains majority. Once he has attained majority, then that is not a blemish unless he makes a practice of it after [attaining] majority.[316]

والبخر والدفر عيب في الجارية، وليس بعيب في الغلام، إلا أن يكون من داءٍ، والزنا وولد الزنا عيب في الجارية دون الغلام

Halitosis and malodorous armpits are blemishes in the slave-woman but they are not blemishes in the [male] slave, unless they are due to illness.[317] [Similarly,] fornication and having an illegitimate child are blemishes in the slave-woman, but not in the [male] slave.

وإذا حدث عند المشترى عيب ثم اطلع على عيب كان عند البائع فله أن يرجع بنقصان العيب، ولا يرد المبيع إلا أن يرضى البائع أن يأخذه بعيبه

When a blemish occurs [in the commodity when it is] with the buyer, and then he discovers a blemish that existed [when the goods were] with the seller, [the buyer] may return [to the seller] for [payment corresponding to] the decrease [in the price] due to the [original] blemish, but he may not return the commodity unless the seller consents to take it [back] with its blemishes.

وإن قطع المشترى الثوب وخاطه أو صبغه أولت السويق بسمن ثم اطلع على عيب رجع بنقصانه، وليس للبائع أن يأخذه بعينه

If the buyer cuts the cloth, stitches it or dyes it, or he mixes barley-mush with ghee, then becomes aware of a defect [in it], he may [still] recover his

decrease [in price],[318] and the seller may not take back [the commodity] as it is.[319]

ومن اشترى عبدا فأعتقه أو مات عنده ثم اطلع على عيب رجع بنقصانه

Whoever buys a slave and sets him free, or [the slave] dies [being] with him, then [the buyer] becomes aware of a blemish [in that slave], he may recover the decrease [in the price the blemish occasioned].

فإن قتل المشتري العبد أو كان طعاما فأكله ثم اطلع على عيبه لم يرجع عليه بشيء في قول أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يرجع بنقصان العيب

If the buyer kills the slave, or [the commodity] is food and he eats it, then becomes aware of a blemish in him [or it], he does not recover anything [as recompense from the seller for the blemish], according to the verdict of Abū Ḥanīfah, may Allah have mercy on him, but they [Abū Yūsuf and Muḥammad], may Allah have mercy on them, said that he may recover the diminishment [in the price] due to the blemish.

ومن باع عبدا فباعه المشتري ثم رد عليه بعيب، فإن قبله بقضاء القاضي فله أن يرده على بائعه الأول، و إن قبله بغير قضاء القاضي فليس له أن يرده على بائعه الأول

Whoever sells a slave and the buyer sells him [to another buyer], then he is returned [to the first buyer][320] due to a blemish; if [the first buyer] had accepted him [back] due to the adjudication of the judge *(qāḍī)*, then he may return him to the first seller, but if he had accepted him without the adjudication of the judge, then he may not return him to his first seller.

ومن اشترى عبدا وشرط البائع البراءة من كل عيب فليس له أن يرده بعيب و إن لم يسم جملة العيوب ولم يعدها

Whoever buys a slave and the seller stipulates immunity from [responsibility for] every blemish, [the buyer] may not return him because of any blemish, even if [the seller] did not mention all the blemishes nor

enumerate them.[321]

باب البيع الفاسد

BAY' FĀSID – INVALID TRANSACTIONS

إذا كان أحد العوضين أو كلاهما محرّما فالبيع فاسد، كالبيع بالميتة أو بالدم أو بالخمر أو بالخنزير، وكذلك إذا كان المبيع غير مملوكٍ كالحر

When either of the two considerations, or both of them, are *ḥarām*, then the sale is invalid, such as the sale of carrion, blood, wine *(khamr)* or pigs, and likewise, when the object of sale is not owned, such as a free person.

وبيع أم الولد والمدبر والمكاتب فاسد

The sale of the *umm al-walad* (slave-woman who bears her master's child), the *mudabbar* (slave who is to be freed at his master's death) and the *mukātab* (slave who is purchasing his freedom from his master) are invalid.

Bay' Gharar – Uncertain Transactions

ولا يجوز بيع السمك في الماء قبل أن يصطاده ، ولا بيع الطائر في الهواء

It is not permitted to sell fish in water before they have been caught, or birds in the air.

ولا يجوز بيع الحمل في البطن ولا النتاج، ولا الصوف على ظهر الغنم ولا بيع اللبن في الضرع

It is not permitted to sell a foetus in the womb, the issue of this foetus, wool on the back of the sheep or milk in the udder.

ولا يجوز بيع وذراع من ثوب، ولا بيع جذع من سقف، وضربة القانص، و لا بيع المزابنة وهو بيع الثمر على النخل بخرصه تمرا

It is not permitted to sell one cubit of fabric,[322] a beam from a roof, a single casting [of the net] of the hunter,[323] the *muzābanah* sale, which is the sale of estimated fruit on the date-palm in exchange for picked dates.

ولا يجوز البيع بإلقاء الحجر والملامسة و المنابذة

The sale by way of stone-throwing[324] is not permitted, or by touching *(mulāmasah)* or throwing *(munābadhah).*[325]

ولا يجوز بيع ثوب من ثوبين

Selling one out of two pieces of fabric is not permitted.[326]

ومن باع عبدا على أن يعتقه المشترى، أو يدبره أو يكاتبه، أو باع أمة على أن يستولدها فالبيع فاسد، وكذلك لو باع عبدا على أن يستخدمه البائع شهرا، أو دارا على أن يسكنها البائع مدة معلومة، أو على أن يقرضه المشترى درهما، أو على أن يهدي له

Whoever sells a slave on the condition that the buyer shall set him free, arrange to set him free on his death [as a *mudabbar]*, or make a contract with him to purchase his freedom [as a *mukātab]*, or sells a slave-woman [stipulating that the buyer] shall make her an *umm al-walad*, then the sale is invalid. Likewise, if he sells a slave on the condition that the seller [himself] will avail of his services for a month, or [sells] a house on the condition that the seller will reside there for a known period [of time], or on the condition that the buyer will lend him a dirham, or on the condition that [the buyer] will give him a gift, [all such transactions are invalid].

ومن باع عينا على أن لا يسلمها إلى رأس الشهر فالبيع فاسد

Whoever sells property on the condition that he will not submit it [to the buyer] until the new month then that sale is invalid.

ومن باع جارية أو دابة إلا حملها فسد البيع

Whoever sells a [pregnant] slave-woman or a [pregnant] pack-animal, excluding its foetus, the sale is invalid.

ومن اشترى ثوبا على أن يقطعه البائع ويخيطه قميصا أو قباء، أو نعلا على أن يحذوها أو يشركها فالبيع فاسد

Whoever buys fabric on the condition that the seller shall cut it and stitch it into a shirt, or [into] an outer garment, or [buys] a sandal on the condition

that [the seller] cuts it out or laces it [for him], the sale is invalid.

والبيع إلى النيروز والمهرجان وصوم النصارى وفطر اليهود إذا
لم يعرف المتبايعان ذلك فاسد

The sale up to the Nayroz (Persian New Year's Day), the Mahrijān (Persian Autumn Festival), Lent (the fasting of the Christians) and Passover (festival of the Jews), when the two parties to the sale do not know that, are invalid.[327]

ولا يجوز البيع إلى الحصاد والدياس والقطاف وقدوم الحاج، فإن
تراضيا بإسقاط الأجل قبل أن يأخذ الناس في الحصاد والدياس
وقبل قدوم الحاج جاز البيع

The sale [which is conditional] on the harvesting [of crops], the threshing [of crops], the picking [of grapes] and the arrival of the *ḥajj* pilgrim is not permitted, but if both of them agree to drop the [conditional] time limit before the people begin harvesting and threshing [the crops], and before the arrival of the *ḥajj* pilgrim, the sale is permitted.

و إذا قبض المشتري المبيع في البيع الفاسد بأمر البائع وفى العقد
عوضان كل واحد منهما مال ملك المبيع ولزمته قيمته ولكل واحد
من المتعاقدين فسخه، فإن باعه المشتري نفذ بيعه

In the invalid sale, when the buyer takes hold of the object of sale with the permission of the seller, and there are two considerations in the contract both of which are property *(māl)*, he gains ownership of the object of sale and its payment is binding upon him and each of the contracting parties has the right to rescind it. If the buyer sells it [on], his sale is executed.

ومن جمع بين حر وعبد أو شاة ذكية و ميتة بطل البيع فيهما،
ومن جمع بين عبد ومدبر أو بين عبده وعبد غيره صح العقد في
العبد بحصته من الثمن

Whoever combines a freeman and a slave [in one transaction], or a slaughtered goat and a dead [goat], the sale is void in both of them, but whoever combines a slave and a *mudabbar*, or his [own] slave and the slave

of someone else, the sale of the slave is valid according to his share of the price.

On Abhorrent Transactions

ونهى رسول الله صلى الله عليه وسلم عن النجش، وعن السوم
على سوم غيره؛ وعن تلقي الجلب، وعن بيع الحاضر للبادي، والبيع
عند أذان الجمعة

The Messenger of Allah ﷺ forbade us to bid up the price *(najash),*[328] bidding *(sawm)* over another's bid,[329] meeting merchants [before they reach the market] (forestalling), the city-dweller selling on behalf of the country-dweller *(bay‘ al-ḥāḍir li'l-bādī)* and selling during the *adhān* of *Jumu‘ah* [prayer].

وكل ذلك يكره ولا يفسد به البيع

All of these [sales] are abhorrent but the sale is not rendered invalid because of them.

ومن ملك مملوكين صغيرين أحدهما ذو رحم محرم من الآخر
لم يفرق بينهما، وكذلك إذا كان أحدهما كبيرا والآخر صغيرا،
فإن فرق بينهما كره ذلك وجاز البيع، وإن كانا كبيرين فلا بأس
بالتفريق بينهما

Whoever acquires ownership of two minor slaves, each of the two being prohibited for marriage due to consanguinity for the other *(dhū raḥm maḥram),* [the owner] should not separate them,[330] and likewise when one of the two is major and the other is minor, if he separates them, it is disapproved but the sale is permitted, but if both of them are major, then there is no objection in separating them.

باب الإقالة

IQĀLAH – NEGOTIATED RESCISSION OF THE CONTRACT

الإقالة جائزة في البيع للبائع و المشترى بمثل الثمن الأول، فإن شرط أكثر منه أو أقل منه فالشرط باطل، و يرد بمثل الثمن الأول، وهي فسخ في حق المتعاقدين بيع جديد في حق غيرهما في قول أبي حنيفة رحمه الله تعالى

Negotiated rescission of the sale is permitted, for both the seller and the buyer, with the same initial price. So, if one stipulates the condition of more than that [initial price], or less than it, the condition is void and [the commodity] is returned [to the seller] according to the initial price,[331] and it is a cancellation *(faskh)* [of the sale] with respect to the two parties to the contract, [but it is] a new transaction with respect to someone other than those two, according to the verdict of Abū Ḥanīfah, may Allah have mercy on him.

وهلاك الثمن لا يمنع صحة الإقالة، وهلاك المبيع يمنع صحتها و إن هلك بعض المبيع جازت الإقالة في باقيه

The destruction of the payment *(thaman)* does not prevent the validity of *iqālah*,[332] but the destruction of the object of sale does prevent its validity,[333] but if [only] a portion of the commodity perishes, *iqālah* is allowed in the remainder of it.[334]

باب المرابحة والتولية

MURĀBAḤAH – PROFIT-BASED SALE – AND *TAWLIYAH* – PROFITLESS SALE

المرابحة: نقل ما ملكه بالعقد الأول بالثمن الأول مع زيادة ربح

Murābaḥah is the transferral of what one gained ownership of in the initial contract with the initial price, plus the addition of profit.[335]

والتولية: نقل ما ملكه بالعقد الأول بالثمن الأول من غير زيادة ربح

Tawliyah is the transferral of what one gained ownership of in the first

contract with the first price, but without the addition of profit.[336]

ولا تصح المرابحة ولا التولية حتى يكون العوض مما له مثل

Murābaḥah and *tawliyah* are not valid unless the object under consideration is something that is fungible *(mithl)*.[337]

ويجوز أن يضيف إلى رأس المال أجرة القصّار والصبّاغ والطرّاز والفتل وأجرة حمل الطعام

It is permitted to add the wages of the fuller, the dyer, the embroiderer, [the cost of] the twining, or the cost of the transportation of food, to the basic cost (*ra's al-māl)*.[338]

و يقول: قام علي بكذا، ولا يقول: اشتريته بكذا

He says, "It cost me so much," but does not say, "I bought it for so much."[339]

فإن اطلع المشترى على خيانة في المرابحة فهو بالخيار عند أبي حنيفة رحمه الله تعالى: إن شاء أخذه بجميع الثمن، و إن شاء رده

If the buyer becomes aware of a deception in the *murābaḥah*, he has a choice, according to Abū Ḥanīfah, may Allah have mercy on him: if he wants, he may take it for the total price, or if he wants, he may return it.[340]

و إن اطلع على خيانة في التولية أسقطها من الثمن، وقال أبو يوسف رحمه الله تعالى : يحط فيهما وقال محمد رحمه الله تعالى: لا يحط فيهما لكن يخير فيهما

If he becomes aware of a deception in a *tawliyah* [transaction], he may drop [the amount involved in the deception] from the price.[341] Abū Yūsuf, may Allah have mercy on him, said that he does not reduce [the price] in either of them,[342] but Muḥammad, may Allah have mercy on him, said that he does not reduce [the price] in either [case], but [rather] he has a choice in both [cases].[343]

ومن اشترى شيئا مما ينقل ويحوّل لم يجز له بيعه حتى يقبضه

Whoever buys something that may be moved and transferred,[344] it is not allowed for him to sell it [further] until he has taken possession of it.

ويجوز بيع العقار قبل القبض عند أبي حنيفة وأبي يوسف رحمهما الله، وقال محمد رحمه الله تعالى: لا يجوز

According to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, the selling of real estate *('iqār)* is permitted prior to taking possession, but Muḥammad, may Allah have mercy on him, said that it is not permitted.

ومن اشترى مكيلا مكايلة، أو موزونا موازنة، فاكتاله أو اتزنه ثم باعه مكايلة أو موازنة، لم يجز للمشترى منه أن يبيعه ولا أن يأكله حتى يعيد الكيل والوزن

Whoever buys a measured item by measuring, or a weighed item by weighing, and measures it or weighs it then sells it by measuring or weighing [it], it is not permitted for the one who buys it from him to sell it, nor to consume it, until he has repeated the measuring and the weighing.[345]

والتصرف في الثمن قبل القبض جائز

Transacting with the price [the sum to be paid] prior to taking possession of [the commodity] is permitted.[346]

ويجوز للمشترى أن يزيد للبائع في الثمن، ويجوز للبائع أن يزيد للمشترى في المبيع، ويجوز أن يحط من الثمن

It is permitted for the buyer to increase the price for the seller,[347] and it is permitted for the seller to give extra as the object of sale to the buyer. It is [also] permitted for him to reduce the price [of the commodity, for the buyer].

ويتعلق الاستحقاق بجميع ذلك

The entitlement is connected to all of that.[348],[349]

ومن باع بثمن حال ثم أجله أجلا معلوما صار مؤجلا

Whoever sells with immediate payment, then postpones it for a known period, it becomes deferred *(mu'ajjal).*[350]

وكل دين حال إذا أجله صاحبه صار مؤجلا إلا القرض، فإن
تأجيله لا يصح

[With regards to] every debt *(dayn)* due, whenever its creditor postpones it, it becomes deferred *(mu'ajjal)*, except the loan because its postponement is not valid.[351]

باب الربا

RIBĀ – USURY

الربا محرّم في كل مكيل أو موزون، إذا بيع بجنسه متفاضلا

Ribā is *ḥarām* in every measured or weighed [item] when bartered [in exchange] for something of its own genus with quantitative disparity *(tafāḍul)*.[352]

فالعلة فيه الكيل مع الجنس أو الوزن مع الجنس

The underlying cause *('illah)* in it *[ribā]* is measuring *(kayl)* against the [same] genus, or weighing *(wazn)* against the [same] genus.[353]

فإذا بيع المكيل بجنسه أو الموزون بجنسه مثلا بمثل جاز البيع،
وإن تفاضلا لم يجز

When the measured [commodity] is bartered [in exchange] for [another commodity of] its [respective] genus, or the weighed [commodity is bartered in exchange] for [another commodity of] its [respective] genus, like for like, then the sale is permitted,[354] but if there is a disparity,[355] it is not permitted.

ولا يجوز بيع الجيد بالردئ مما فيه الربا إلا مثلا بمثل

The sale of good [quality in exchange] for a bad [quality] in [potentially] usurious [commodities] is not permitted, but only like for like.[356]

وإذا عدم الوصفان الجنس والمعنى المضموم إليه حل التفاضل
والنساء، وإذا وجدا حرم التفاضل والنساء، وإذا وجد أحدهما
وعدم الآخر حل التفاضل وحرم النساء

When both properties [of the commodity] do not exist, [that is]:

1. The genus, and
2. The factor that is attributed to it [like measure or weight],

quantitative disparity *(tafāḍul)*[357] and delay[358] are [both] allowed,[359] but when both of them exist, then quantitative disparity and delay are prohibited. If, however, one of the two [properties] exists and the other does not exist, quantitative disparity is allowed but delay is [still] prohibited.[360]

وكل شيء نص رسول الله صلى الله عليه وسلم على تحريم التفاضل فيه كيلا فهو مكيلٌ أبدا و إن ترك الناس فيه الكيل، مثل الحنطة والشعير والتمر والملح، وكل شيءٍ نص رسول الله صلى الله عليه وسلم على تحريم التفاضل فيه وزنا فهو موزونٌ أبدا و إن ترك الناس الوزن فيه، مثل الذهب والفضة، وما لم ينص عليه فهو محمول على عادات الناس

Everything for which the Messenger of Allah ﷺ stipulated the unlawfulness of quantitative disparity with regards to measurement is always measured, though the people abandon measuring it, for example, wheat, barley, dates and salt, and everything for which the Messenger of Allah ﷺ stipulated the unlawfulness of quantitative disparity with regards to weight is always weighed, though the people abandon weighing it, for example, gold and silver, and whatever he did not stipulate, that depends on the customs of the people.[361]

وعقد الصرف ما وقع على جنس الأثمان يعتبر فيه قبض عوضيه في المجلس، وما سواه مما فيه الربا يعتبر فيه التعيين، ولا يعتبر فيه التقابض

The contract of exchange *(ṣarf)* that takes place in the genus of prices *(athmān)* [like gold and silver], is determined by the taking possession of both parts to be exchanged in the same session *(majlis)*.[362] Whatever else [there may be] other than that, in which there may be *ribā* [like that which is measured or weighed] what is considered is the specification but their taking possession from each other is not considered.[363]

ولا يجوز بيع الحنطة بالدقيق ولا بالسويق، وكذلك الدقيق بالسويق

The sale of wheat for [the exchange of] flour is not allowed, nor for barley-mush, and likewise, [the sale of] flour for barley-mush [is not permitted].

ويجوز بيع اللحم بالحيوان عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى : لا يجوز، حتى يكون اللحم أكثر مما في الحيوان فيكون اللحم بمثله والزيادة بالسقط

The sale of meat [in exchange] for an animal is permitted, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that it is not permitted, unless there is more meat than there is on the animal, so the meat is equivalent to its like [in the weight of the animal] and the extra [meat is] for the leftovers [such as bones, skin, etc.].

ويجوز بيع الرطب بالتمر مثلا بمثل عند أبي حنيفة، وكذلك العنب بالزبيب

The sale of fresh dates [in exchange] for dried dates, like for like, is permitted, according to Abū Ḥanīfah, may Allah have mercy on him, as is [the sale of] grapes for raisins.

ولا يجوز بيع الزيتون بالزيت والسمسم بالشيرج حتى يكون الزيت والشيرج أكثر مما في الزيتون والسمسم، فيكون الدهن بمثله والزيادة بالثجيرة

The sale of olives [in exchange] for [olive] oil is not permitted, nor sesame for sesame oil, unless the [olive] oil and the sesame oil are more than what [oil there] is in the olive and the sesame so the oil will be equivalent to [the oil] and the extra [will be in exchange] for the dregs.

ويجوز بيع اللحمان المختلفة بعضها ببعض متفاضلا، وكذلك ألبان الإبل و البقر والغنم بعضها ببعض متفاضلا

The sale of two different meats,[364] one of them [in exchange] for another, in quantitative disparity, is permitted, and likewise, the milk of camels, cows, goats and sheep, one for the other, in quantitative disparity [is permissible].

وخل الدقل بخل العنب متفاضلا، ويجوز بيع الخبز بالحنطة والدقيق متفاضلا

[The sale of] the vinegar of dates [in exchange] for the vinegar of grapes, in quantitative disparity [is permissible]. The sale of bread for wheat and flour with quantitative disparity is permissible.

ولا ربا بين المولى وعبده، ولا بين المسلم والحربي في دار الحرب

There can be no *ribā* between a master and his slave,[365] nor between a Muslim and a belligerent *(ḥarbī)* in *dār al-ḥarb* (enemy territory).[366]

باب السلم

SALAM – ADVANCE PAYMENT

السلم جائز في المكيلات والموزونات والمعدودات التي لا تتفاوت كالجوز والبيض و المذروعات

Salam is permitted in [the case of]:

1. Dry-measured,[367]
2. Weighed,
3. Counted [commodities] that are not irregular such as walnuts and eggs, and
4. [Commodities] measured by length.[368]

ولا يجوز السلم في الحيوان، ولا في أطرافه، ولا في الجلود عددا، ولا في الحطب حزما، ولا في الرطبة جرزا

Salam is not permitted for:

1. Animals,
2. Or for their appendages [such as their feet, skins, bones, etc.],
3. Numbered hides,

4. Bundled firewood,
5. Bundled alfalfa, or
6. For packs of ripe dates.[369]

ولا يجوز السلم حتى يكون المسلم فيه موجودا من حين العقد إلى حين المحل

Salam is not permitted unless the commodity for which the advance is to be paid *(muslam fīhi)* is present from the point of contract till the point of [the expiry of] the duration.[370]

ولا يصح السلم إلا مؤجلا، ولا يجوز إلا بأجل معلوم

Salam is not permitted unless it is delayed,[371] and it is not permitted unless it is for a known period.[372]

ولا يجوز السلم بمكيال رجل بعينه، ولا بذراع رجل بعينه، ولا في طعام قرية بعينها، ولا في ثمرة نخلة بعينها

Salam is not permitted:

1. With the measuring instrument of a specific person,
2. By the cubit[373] of a specific person,
3. For the food of a specific village, or
4. For the fruit of a specific date-palm tree.[374]

ولا يصح السلم عند أبي حنيفة رحمه الله إلا بسبع شرائط تذكر في العقد: جنس معلوم، ونوع معلوم، وصفة معلومة، ومقدار معلوم، وأجل معلوم، ومعرفة مقدار رأس المال إذا كان مما يتعلق العقد على مقداره، كالمكيل والموزون والمعدود، وتسمية المكان الذي يوافيه فيه إذا كان له حمل ومؤنة

Salam is not valid, according to Abū Ḥanīfah, may Allah have mercy on him, except when seven conditions are stated in the contract:

1. Known genus,[375]
2. Known category,[376]

3. Known description,[377]
4. Known amount,
5. Known duration,
6. Knowledge of the amount of capital (*ra’s al-māl),* when that which the contract applies to, like the measured, weighed or counted [commodities], is according to that amount,
7. The designation of the location wherein he will [deliver] it, when transport and supply are due from him.[378]

وقال أبو يوسف ومحمد رحمهما الله: لا يحتاج إلى تسمية رأس المال إذا كان معينا ولا إلى مكان التسليم، و يسلمه في موضع العقد

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that one need not mention the capital [amount] when it is [already] specified, nor the location [where the goods] are to be surrendered, and he submits it in the place of the contract.

ولا يصح السلم حتى يقبض رأس المال قبل أن يفارقه

Salam is not valid unless [the seller] takes possession of the capital before he separates from [the purchaser].

ولا يجوز التصرف في رأس المال ولا في المسلم فيه قبل القبض، ولا تجوز الشركة ولا التولية في المسلم فيه قبل قبضه

Transacting with the capital and the commodity for which the advance is to be paid *(muslam fīhi)* is not permitted prior to taking possession of it, nor is [any form of] partnership or *tawliyah* (profitless sale) permitted in the commodity for which the advance is to be paid *(muslam fīhi)* prior to taking possession of it.

و يصح السلم في الثياب إذا سمى طولا وعرضا ورقعة، ولا يجوز السلم في الجواهر ولا في الخرز

Salam in clothes is valid when one mentions the length, the breadth and the thickness, but it is not allowed in gems or in beads.

ولا بأس بالسلم في اللبن والآجر إذا سمى ملبنا معلوما

There is no objection to [the validity of] *salam* in unfired bricks and fired bricks when a known brick-mould is specified.

The Conditions for the Validity of *Salam*

وكل ما أمكن ضبط صفته ومعرفة مقداره جاز السلم فيه، وما لا يمكن ضبط صفته و معرفة مقداره لا يجوز السلم فيه

Salam is permitted in everything which it is possible to describe or know the measure of accurately, and anything which it is not possible to describe or know the measure of accurately, *salam* is not permitted in it.

ويجوز بيع الكلب والفهد والسباع، ولا يجوز بيع الخمر والخنزير، ولا يجوز بيع دود القز إلا أن يكون مع القز، ولا النحل إلا مع الكورات

The sale of a dog, cheetah or predator is permitted, but the sale of alcohol and swine is not allowed. The sale of silkworms is not permitted unless it includes the silk, nor is the sale of bees [allowed] unless with the hives.

وأهل الذمة في البياعات كالمسلمين إلا في الخمر والخنزير خاصة، فإن عقدهم على الخمر كعقد المسلم على العصير، وعقدهم على الخنزير كعقد المسلم على الشاة

The *dhimmīs*, in sales, are like the Muslims, except only in [the sales of] alcohol and pigs; their contract for alcohol is like the contract of the Muslim for juice, and their contract for pigs is like the contract of the Muslim for sheep and goats.[379]

باب الصرف

ṢARF – CURRENCY TRANSACTIONS/EXCHANGE

الصرف هو البيع إذا كان كل واحد من عوضيه من جنس الأثمان

Ṣarf is that transaction when each of the two things to be exchanged are from the genus of [commodities used as] prices.[380]

فإن باع فضة بفضة أو ذهبا بذهب لم يجز إلا مثلا بمثل و إن
اختلفا في الجودة والصياغة

If someone sells silver [in exchange] for silver, or gold for gold, it is not permitted unless it is like for like, even if they differ in quality and form.[381]

ولا بد من قبض العوضين قبل الافتراق

Taking possession of both considerations prior to the separation [of the parties] is necessary.[382]

و إذا باع الذهب بالفضة جاز التفاضل ووجب التقابض، و إن
افترقا في الصرف قبل قبض العوضين أو أحدهما بطل العقد

When one sells gold [in exchange] for silver, quantitative disparity is permitted[383] and taking possession from each other is obligatory. If they separate during the transaction of *ṣarf* before taking possession of both things to be exchanged, or of either one of the two, the contract is void.[384]

ولا يجوز التصرف في ثمن الصرف قبل قبضه

Transacting with the price of the *ṣarf* prior to taking possession of it is not allowed.[385]

ويجوز بيع الذهب بالفضة مجازفة

Trading gold for silver [based] on conjecture [as to the weights] is permitted.[386]

ومن باع سيفا محلى بمائة درهم وحليته خمسون درهما فدفع من
ثمنه خمسين جاز البيع، وكان المقبوض من حصة الفضة و إن لم
يبين ذلك، وكذلك إن قال: خذ هذه الخمسين من ثمنهما، فإن لم
يتقابضا حتى افترقا بطل العقد في الحلية

Whoever sells an ornamented sword for one hundred dirhams, when its ornaments[387] [alone] are [worth] fifty dirhams, and [the buyer] pays fifty dirhams of its price, the sale is permitted. The [payment that is] taken shall be for the share of the silver, even though he does not explain that, and likewise, if one says, “Take these fifty [dirhams] from the price of the two of them [the

sword and the ornaments].” If both of them do not take possession before they separate, the contract [regarding] the ornaments[388] is void.

وإن كان يتخلص بغير ضرر جاز البيع في السيف وبطل في الحلية

If [the ornaments] can be removed without damage, the sale of the sword is valid but it is invalid in respect of the ornaments.[389]

ومن باع إناء فضة ثم افترقا وقد قبض بعض ثمنه بطل العقد فيما لم يقبض، وصح فيما قبض وكان الإناء مشتركا بينهما

Whoever sells a pot [made] of silver, then the two [parties] separate and [the seller] has taken a portion of its price, the contract is invalid in whatever he has not taken possession of but valid in whatever he has taken possession of, and the pot is shared between them [according to their respective shares of ownership].

وإن استحق بعض الإناء كان المشترى بالخيار: إن شاء أخذ الباقي بحصته من الثمن، وإن شاء رده

If a portion of the pot was the entitlement [of someone else], [then] the buyer has the choice:

1. If he wants, he may take the rest for its share of the price, or
2. If he wants, he may return it [all].

ومن باع قطعة نقرة فاستحق بعضها أخذ ما بقى بحصته، ولا خيار له

Whoever sells a piece of silver when a portion of it was the entitlement of someone [else], he takes the remainder of its share [of the price from the seller] and he has no choice in it.

ومن باع درهمين ودينارا بدينارين ودرهم جاز البيع وجُعل كل واحدٍمن الجنسين بدلا من الجنس الآخر

Whoever sells two dirhams and one dinar [in exchange] for two dinars and one dirham, the sale is permitted; each of the two [types of] genus is regarded as a substitute for the other type.

ومن باع أحد عشر درهما بعشرة دراهم ودينار جاز البيع وكانت العشرة بمثلها، والدينار بدرهم

Whoever sells eleven dirhams for ten dirhams and one dinar, the transaction is permitted; the ten [dirhams] are equivalent [to the first ten] and the dinar is [regarded as being in exchange] for the [eleventh] dirham.

ويجوز بيع درهمين صحيحين ودرهم غلةً بدرهم صحيح ودرهمين غلة

The sale of two sound dirhams and one unsound dirham for one sound dirham and two unsound dirhams is permitted.

و إذا كان الغالب على الدراهم الفضة فهي في حكم الفضة، و إن كان الغالب على الدنانير الذهب فهي في حكم الذهب

If silver is predominant in the dirhams, they are [reckoned] according to the ruling of silver, and if gold is predominant in the dinars, then they are [reckoned] according to the ruling of gold.

فيعتبر فيهما من تحريم التفاضل ما يعتبر في الجياد

Whatever is taken account of in [the case of] perfect [coins] with regards to the unlawfulness of quantitative disparity is [also] taken into account in these two (i.e. coins which are either predominantly gold or silver).[390]

و إن كان الغالب عليهما الغش فليسا في حكم الدراهم والدنانير فهما في حكم العروض

If adulteration is predominant in both of them, then neither is under the ruling of dirhams or dinars; they are both under the ruling of goods.

فإذا بيعت بجنسها متفاضلا جاز البيع، و إن اشترى بها سلعة ثم كسدت فترك الناس المعاملة بها قبل القبض بطل البيع عند أبي حنيفة رحمه الله تعالى وقال أبو يوسف رحمه الله تعالى: عليه قيمتها يوم البيع

Thus, if they are sold [in exchange] for their genus with quantitative

disparity, the transaction is permitted. If one buys goods with them, and thereafter they become unmarketable (i.e. out of use) and people have abandoned trading with them before [the other party] taking possession [of them], the sale is void according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf, may Allah have mercy on him, said that its value on the day of the sale is due from [the buyer].[391]

وقال محمدٌ رحمه الله تعالى : عليه قيمتها آخر ما يتعامل الناس بها

Muḥammad, may Allah have mercy on him, said that its value at the last time people transacted with them is due from him.

ويجوز البيع بالفلوس النافقة وإن لم يعين، وإن كانت كاسدة لم يجز البيع بها حتى يعينها

Sale is permitted with copper coins *(fulūs)*[392] which are in ready demand even if one does not specify it, but if they are not in ready demand, the sale is not permitted with them until one specifies them.

وإذا باع بالفلوس النافقة ثم كسدت قبل القبض بطل البيع عند أبي حنيفة رحمه الله تعالى

When one sells [something] for copper coins *(fulūs)*, and thereafter they become not in demand prior to taking possession, the sale is void according to Abū Ḥanīfah, may Allah have mercy on him.[393]

ومن اشترى شيئا بنصف درهم فلوسا جاز البيع وعليه ما يباع بنصف درهم من فلوس

Whoever buys something with half a dirham's worth of copper coins, the transaction is permitted and that which has been sold for half a dirham of copper coins is due from him.[394]

ومن أعطى صيرفيا درهما فقال: أعطني بنصفه فلوسا وبنصفه نصفا إلا حبةً فسد البيع في الجميع عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : جاز البيع في الفلوس، وبطل فيما بقي، ولو قال (أعطني نصف درهم فلوسا ونصفا إلا حبة) جاز البيع

Whoever gives one dirham to the money-changer *(ṣayrafī)* and says, "Give me copper coins for a half of it, and for [the other] half of it, a half [dirham] minus a little amount,"[395] the transaction is invalid in all of it, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that the transaction is valid in the copper coins and invalid in the rest.[396] If he says, "Give me half a dirham in copper coins and a half [dirham] less a little amount," the transaction is permitted.

ولو قال (أعطني درهما صغيرا وزنه نصف درهم إلا حبة والباقي فلوسا) جاز البيع وكان النصف إلا حبة بإزاء الدرهم الصغير والباقي بإزاء الفلوس

If he says, "Give me a small dirham whose weight is half a dirham less a small amount, and the remainder as copper coins," the transaction is permitted; the half [dirham] less a small amount is in payment for the small dirham and the rest in payment for the copper coins.

كتاب الرهن

RAHN – PAWNING

الرهن ينعقد بالإيجاب والقبول، ويتم بالقبض

The [contract of] pawning (*rahn*)[397] is concluded by offer and acceptance,[398] and it is complete by taking possession.[399]

فإذا قبض المرتهن الرهن محوزا مفرغا مميزا تم العقد فيه

When the pledgee (*murtahin*) takes possession of the collateral, which is distinct, absolute and unattached,[400] the contract in that is complete.

وما لم يقبضه فالراهن بالخيار: إن شاء سلمه إليه، وإن شاء رجع عن الرهن

So long as [the pledgee] does not take possession, the pledgor (*rāhin*) has a choice:

1. If he wants, he may surrender it to [the pledgee], or
2. If he wants, he may walk away from the [contract of] pawning.

فإذا سلمه إليه فقبضه دخل في ضمانه

When [the pledgor] surrenders [the collateral (*marhūn)*] to [the pledgee] and he takes possession of it, it enters into the responsibility (*ḍamān*) of [the pledgee].[401]

ولا يصح الرهن إلا بدين مضمون، وهو مضمون بالأقل من قيمته ومن الدين

Pawning is not valid except [in exchange] for a guaranteed debt,[402] and it is guaranteed for less than its value[403] and [less] than the [amount of] the debt.

فإذا هلك الرهن في يد المرتهن وقيمته والدين سواءٌ صار المرتهن مستوفيا لدينه حكما، وإن كانت قيمة الرهن أكثر من الدين فالفضل أمانة، وإن كانت قيمة الرهن أقل من ذلك سقط من الدين بقدرها ورجع المرتهن بالفضل

If the collateral perishes [whilst] in the possession of the pledgee, and its value and the debt were equal, the pledgee becomes, ipso facto, someone who has fulfilled his debt [that was due for it].[404] If the value of the collateral was more than the debt, then the excess is a trust.[405] If, however, the value of the collateral was less than that [of the debt], then its equivalent [value] lapses from the debt and the pledgee recovers [only] the excess [from the pledgor].

ولا يجوز رهن المشاع، ولا رهن ثمرة على رؤوس النخل دون النخل، ولا زرع في الأرض دون الأرض، ولا يجوز رهن النخل والأرض دونهما

Pawning common property (*mushā'*) is not permitted, nor is pawning fruit on the date-palms without [the inclusion of] the date-palms nor crops in the field without [the inclusion of] the field, and pawning date-palms and land is not permitted without them [the fruit or crops].

ولا يصح الرهن بالأمانات كالودائع و العواري والمضاربات ومال الشركة

It is not valid to pawn things held in trust (*amānah*), such as deposits (*wadī'ah*), borrowed items (*'āriyah*), property that is involved in a profit-and-loss sharing deal (*muḍārabah*) and property belonging to a partnership (*māl al-sharikah).*

ويصح الرهن برأس مال السلم وثمن الصرف والمسلم فيه، فإن هلك في مجلس العقد تم الصرف والسلم وصار المرتهن مستوفيا لحقه حكما

Pledge is valid with the capital of *salam* property, [with] the payment of *ṣarf* and [with] the commodity for which the advance is to be paid (*muslam fīhi).* If it perishes in the session of the contract [after the pledgee has taken possession of it], the [transaction] of *ṣarf* and *salam* will be [deemed to have

been] completed, and the pledgee becomes someone who has, legally, collected his right.

و إذا اتفقا على وضع الرهن على يدى عدل جاز، وليس للمرتهن
ولا للراهن أخذه من يده، فإن هلك في يده هلك من ضمان المرتهن

When they mutually agree to place the pledge in the possession of a just person, it is permitted, and neither the pledgee, nor the pledgor can take it from him. If it perishes in his possession, it is [deemed to have] perished at the liability of the pledgee.

ويجوز رهن الدراهم والدنانير والمكيل والموزون

It is permitted to pledge dirhams, dinars and measured and weighed [items].

فإن رهنت بجنسها وهلكت هلكت بمثلها من الدين، و إن
اختلفا في الجودة والصناعة

If one pledges [something for something] of its genus[406] and it perishes, its equivalent is [deemed] to have perished from [the total value] of the debt, even though they may differ in quality and workmanship.

ومن كان له دين على غيره فأخذ منه مثل دينه فأنفقه ثم علم أنه كان
زيوفا فلا شيء له عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف
ومحمد رحمهما الله تعالى: يرد مثل الزيوف ويرجع مثل الجياد[407]

Whoever is owed a debt by another person and takes from him the equivalent of his debt and spends it, then comes to know that it was counterfeit, according to Abū Ḥanīfah, may Allah have mercy on him, there is nothing for him.[408] Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that [the creditor] is to return the same as the counterfeit [currency] and resort [to the debtor for] the genuine [currency].

ومن رهن عبدين بألف فقضى حصة أحدهما لم يكن له أن
يقبضه حتى يؤدي باقي الدين

Whoever pawns two slaves for one thousand, then discharges the share of

one of the two, it is not [permitted] for him to take possession of [that slave] until he has settled the remainder of the debt.[409]

فإذا وكل الراهن المرتهن أو العدل أو غيرهما في بيع الرهن عند حلول الدين فالوكالة جائزةٌ

When the pledgor authorises the pledgee, a just person, or someone other than those two [as an agent] to sell the collateral when [payment of the] debt falls due, such agency (*wakālah*) is permitted.

فإن شرطت الوكالة في عقد الرهن فليس للراهن عزله عنها، فإن عزله لم ينعزل، و إن مات الراهن لم ينعزل أيضا

If the agency is stipulated as a condition in the contract of pawning, the pledgor has no right to remove him[410] from it. If he removes him, he is not [legally] removed,[411] and if the pledgor dies, he will not be removed [then] either.

وللمرتهن أن يطالب الراهن بدينه ويحبسه به

The pledgee may demand his debt from the pledgor, and he may [even] have him detained for it.[412]

و إن كان الرهن في يده فليس عليه أن يمكنه من بيعه حتى يقبض الدين من ثمنه، فإذا قضاه الدين قيل له: سلم الرهن إليه

If the pawned item is in the possession of [the pledgee], he does not have to allow [the pledgor] to sell it until [the pledgee] has taken the debt from its price, and when [the pledgor] has settled the debt, it is said to [the pledgee], “Surrender the collateral to him.”[413]

و إذا باع الراهن الرهن بغير إذن المرتهن فالبيع موقوف، فإن أجازه المرتهن جاز، و إن قضاه الراهن من دينه جاز

If the pledgor sells the collateral without the permission of the pledgee, the sale is suspended:

1. If the pledgee allows it [to go ahead], it is permitted, or
2. If the pledgor pays off his debt, it is [also] permitted.

و إن أعتق الراهن عبد الرهن بغير إذن المرتهن نفذ عتقه، فإن كان
الراهن موسرا والدين حالا طولب بأداء الدين، و إن كان مؤجلا أخذ
منه قيمة العبد فجعلت رهنا مكانه حتى يحل الدين، و إن كان معسرا
استسعى العبد في قيمته فقضى بها الدين ثم يرجع العبد على المولى

If the pledgor sets free the slave given as collateral without the permission of the pledgee, his being set free is expedited.[414] If the pledgor is comfortably well off and the debt is due, he is asked to settle the debt. If it is due at a later date (*mu'ajjal*), the value of a slave is taken from [the pledgor] and it is pledged in place of [the freed slave] until the debt is settled. But if the pledgor is poor, the slave is set to work to settle his [own] value and, thereby, pay off the debt. Then the slave recovers it from the master.[415]

وكذلك إن استهلك الراهن الرهن، و إن استهلكه أجنبيٌّ فالمرتهن
هو الخصم في تضمينه، فيأخذ القيمة فتكون القيمة رهنا في يده

Likewise, if the pledgor uses up [or destroys] the collateral [the preceding case applies]. If a stranger uses up [or destroys the collateral], the pledgee is the claimant in being compensated;[416] he takes the value and the value becomes the collateral in his possession.

وجناية الراهن على الرهن مضمونة، وجناية المرتهن عليه تسقط
من الدين بقدرها، وجناية الرهن على الراهن وعلى المرتهن وعلى
مالهما هدرٌ

The offence of the pledgor against the collateral shall be [duly] compensated.[417]

The offence of the pledgee against [the collateral] reduces the debt in proportion to [the offence].[418]

The offence of the collateral against the pledgor, or against the pledgee, and against their property is disregarded.[419]

وأجرة البيت الذي يحفظ فيه الرهن على المرتهن، وأجرة الراعى
على الراهن، ونفقة الرهن على الراهن ونماؤه للراهن، فيكون
النماء رهنا مع الأصل

The charges for the house in which the collateral is kept are due from the pledgee, but the wages of the guard are due from the pledgor and the expenditure for the security of the collateral is [also] due from the pledgor, and its increase[420] belongs to the pledgor, and so the growth is [also] collateral along with the original.[421]

فإن هلك النماء هلك بغير شيء، وإن هلك الأصل وبقي النماء افتكه الراهن بحصته، ويقسم الدين على قيمة الرهن يوم القبض وعلى قيمة النماء يوم الفكاك

If the increase perishes, it perishes without anything.[422] If the original perishes but the increase remains, the pledgor redeems it according to its share, and the debt will be divided over:

1. The value of the debt on the day it was taken possession of, and
2. The value of the increase on the day of its redemption.[423]

فما أصاب الأصل سقط من الدين بقدره، وما أصاب النماء افتكه الراهن به

So, whatever misfortune happens to the original, it drops from the debt in proportion to it, and whatever misfortune happens to the increase, the pledgor redeems it.

وتجوز الزيادة في الرهن، ولا تجوز الزيادة في الدين عند أبي حنيفة ومحمد رحمهما الله تعالى، ولا يصير الرهن رهنا بهما، وقال أبو يوسف رحمه الله تعالى: هو جائز

It is permitted to increase the pledge, but it is not permitted to increase the debt, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them. The pledge does not become a pledge with the two of them,[424] but Abū Yūsuf, may Allah have mercy on him, said that it is permitted [to increase both the pledge as well as the debt].

و إذا رهن عينا واحدة عند رجلين بدين لكل واحد منهما جاز وجميعها رهن عند كل واحد منهما، والمضمون على كل واحد منهما حصة دينه منها، فإن قضى أحدهما دينه كان كلها رهنا في يد الآخر حتى يستوفي دينه

When someone pledges one item (*‘ayn*) with two men for a debt with each one of the two, it is permitted, and the whole of it is a pledge with each of the two. What is guaranteed to each of the two is the portion of his debt from it. If [the pledgor] fulfils the debt of either of the two, the whole of [the item] becomes a pledge in the possession of the other until [the pledgor] settles his debt [with that other pledgee].

ومن باع عبدا على أن يرهنه المشترى بالثمن شيئا بعينه، فامتنع المشترى من تسليم الرهن لم يجبر عليه، وكان البائع بالخيار: إن شاء رضي بترك الرهن، وإن شاء فسخ البيع، إلا أن يدفع المشترى الثمن حالا أو يدفع قيمة الرهن فيكون رهنا

Whoever sells a slave on the condition that the buyer will furnish a pledge with him of something specific in lieu of the price, and the buyer refuses to surrender the collateral [to him], [the buyer] is not compelled to do that, and the seller has a choice:

1. If he wants, he may accept the abandonment of the pledge, or
2. If he wants, he may rescind the sale, unless the buyer pays the price immediately or pays the value of the collateral, which becomes collateral.

وللمرتهن أن يحفظ الرهن بنفسه وزوجته وولده وخادمه الذي في عياله، و إن حفظه بغير من هو في عياله أو أودعه ضمن

The pledgee may protect the collateral by himself, his wife, his children[425] and his servant who [resides] in his household. If he protects it with anyone other than someone who is in his household, or he deposits it [with someone else], he is liable for it [himself].

وإذا تعدى المرتهن في الرهن ضمنه ضمان الغصب بجميع قيمته، وإذا أعار المرتهن الرهن للراهن فقبضه خرج من ضمان المرتهن، فإن هلك في يد الراهن هلك بغير شيء، وللمرتهن أن يسترجعه إلى يده، فإذا أخذه عاد الضمان عليه، وإذا مات الراهن باع وصيه الرهن وقضى الدين، فإن لم يكن له وصيٌّ نصب القاضي له وصيا وأمره ببيعه

When the pledgee violates the [rights due to the] collateral, he is liable for it [with the same liability as] the compensation due for expropriation (*ghaṣb*), [according to] its complete value.

When the pledgee lends the collateral [back] to the pledgor and he takes possession of it, it leaves the responsibility of the pledgee.[426] Then, if it perishes [whilst] in the possession of the pledgor, it perishes without anything.[427] The pledgee may retrieve it into his [own] possession, and when he takes it, the responsibility returns to him.

When the pledgor dies, his executor (*waṣī*) sells the collateral and settles the debt. But if he has no executor, the judge appoints an executor for him and orders him to sell it.

كتاب الحجر

ḤAJR – LIMITATION ON SOMEONE'S LEGAL COMPETENCE

الأسباب الموجبة للحجر ثلاثة: الصغر، والرق، والجنون

There are three factors that require limitation on someone's legal competence (*ḥajr*):

1. Minority,
2. Slavery, and
3. Insanity.

ولا يجوز تصرف الصغير إلا بإذن وليه، ولا يجوز تصرف العبد إلا بإذن سيده، ولا يجوز تصرف المجنون المغلوب على عقله بحال

Minors may not dispose (*taṣarruf*) [of their property] except with the leave of their guardian (*walī*), and slaves may not dispose [of their property] except with the leave of their master. The insane, whose intellects are overwhelmed [with insanity], may not dispose [of their property] under any circumstances.

ومن باع من هؤلاء شيئا أو اشتراه وهو يعقل البيع و يقصده فالولي بالخيار: إن شاء أجازه إذا كان فيه مصلحة، و إن شاء فسخه

Of these [three categories of people], whoever sells something or buys it, and understands the transaction and intends it, the guardian has the choice:

1. If he wants, he may permit it, if there is any benefit in it, or
2. If he wants, he may rescind it.

فهذه المعاني الثلاثة توجب الحجر في الأقوال دون الأفعال

These three factors compel limitation on someone's legal competence in verbal [transactions] rather than practical actions.

وأما الصبي والمجنون لا تصح عقودهما، ولا إقرارهما، ولا يقع
طلاقهما ولا إعتاقهما، فإن أتلفا شيئا لزمهما ضمانه

With regards to the minor and the insane, their contracts are not valid nor are their acknowledgements, and their declarations of divorce do not transpire nor their freeing [of slaves]. If, however, they wreck something, its compensation is binding upon them.

وأما العبد فأقواله نافذةٌ في حق نفسه غير نافذة في حق مولاه، فإن أقر
بمال لزمه بعد الحرية، ولم يلزمه في الحال، و إن أقر بحد أو قصاص
لزمه في الحال، و ينفذ طلاقه و لا يقع طلاق مولاه على إمرأته

With regards to the slave, his statements are enforceable with respect to himself, [but] not enforceable with respect to his master. If he approves [the transaction of] property, it is not binding upon him immediately, but it will be binding upon him after [his] being freed. If he confesses to [having committed an act necessitating] a *ḥadd* [punishment] or retaliatory punishments (*qiṣāṣ*) (retaliation), it is binding upon him immediately. His declaring divorce takes effect, but if his master declares that the slave's wife is divorced it does not take effect.

On Fools

وقال أبو حنيفة رحمه الله تعالى: لا يحجر على السفيه إذا كان
عاقلا بالغا حرا، وتصرفه في ماله جائز، و إن كان مبذرا مفسدا
يتلف ماله فيما لا غرض له فيه ولا مصلحة مثل أن يتلفه في البحر
أو يحرقه في النار

Abū Ḥanīfah, may Allah have mercy on him, said that there is no limitation on the legal competence of a fool (*safīh*) when he is sane, major and free. His transacting with his [own] property is permitted, even if he is a squanderer, corrupter, destroying his [own] property in ways in which there is no purpose or benefit for him, for example, he wrecks it in the sea or burns it in fire.[428]

إلا أنه قال: إذا بلغ الغلام غير رشيد لم يسلم إليه ماله حتى يبلغ خمسا وعشرين سنة

Except that he [Abū Ḥanīfah, may Allah have mercy on him] said, when a minor attains majority in the state of being irrational, his property is not to be surrendered to him until he reaches twenty-five years [of age].

وإن تصرف فيه قبل ذلك نفذ تصرفه، فإذا بلغ خمسا وعشرين سنة سلم إليه ماله وإن لم يؤنس منه الرشد

If, however, he transacts with it prior to that, his transaction takes effect, and when he reaches twenty-five years [of age], his property is surrendered to him, though rationality may [still] not be observed in him.

وقال أبو يوسف ومحمد رحمهما الله تعالى: يحجر على سفيه ويمنع من التصرف في ماله، فإن باع لم ينفذ بيعه في ماله، وإن كان فيه مصلحة أجازه الحاكم

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that limitation of legal competence is [imposed] on the fool and he is deterred from transacting with his property. If he sells [anything], his sale regarding his property is not implemented, but if there is benefit in it [for him], the ruler (*ḥākim*) should permit it.

وإن أعتق عبدا نفذ عتقه وكان على العبد أن يسعى في قيمته، وإن تزوج امرأة جاز نكاحه، فإن سمى لها مهرا جاز منه مقدار مهر مثلها وبطل الفضل

If he sets a slave free, his setting [that slave] free takes effect, and it is [incumbent] on the slave to work [and pay off] for his [own] value.[429] If he marries a woman, his marriage is valid, and if he names a dowry, of it the [equivalent of the reasonable amount of] dowry that a woman of her status [is accustomed to] is permitted, and the excess is invalid.

وقالا رحمهما الله تعالى فيمن بلغ غير رشيد: لا يدفع إليه ماله أبدا حتى يؤنس منه الرشد، ولا يجوز تصرفه فيه

The two of them,[430] may Allah have mercy on them, said regarding

someone who attains majority in the state of being irrational, his property should never be given to him until rationality is observed in him, and his transacting with it is not allowed [either].

وتخرج الزكاة من مال السفيه، وينفق على أولاده وزوجته ومن تجب نفقته عليه من ذوي الأرحام

Zakāh is discharged from the property of the fool, and it is spent on his children and his wife, and upon whomsoever of the uterine relatives (*dhawū'l-arḥām*) it is obligatory upon him [to maintain].[431]

فإن أراد حجة الإسلام لم يمنع منها ولا يسلم القاضي النفقة إليه، ولكن ويسلمها إلى ثقة من الحاج ينفقها عليه في طريق الحج

If he intends to perform the *ḥajj* of Islam, he should not be prevented from that. The judge does not surrender the expenditure to him, but he surrenders it to a reliable person from the *ḥājjīs*, who spends it on him on the journey of the *ḥajj*.

فإن مرض فأوصى بوصايا في القرب وأبواب الخير جاز ذلك من ثلث ماله

If he falls ill and makes bequests for [acts of seeking] closeness [to Allah], and for the categories of goodness, it is permitted from one-third of his property.[432]

Puberty

وبلوغ الغلام بالاحتلام والإنزال والإحبال إذا وطئ

The reaching puberty of a boy is by way of nocturnal emission (i.e. a wet dream), ejaculation, or by his causing pregnancy when he has sexual intercourse.

فإن لم يوجد ذلك فحتى يتم له ثماني عشرة سنة عند أبي حنيفة رحمه الله تعالى

If [any of] that is not found, then [he is a minor] until he has completed eighteen years [of age], according to Abū Ḥanīfah, may Allah have mercy on

him.

وبلوغ الجارية بالحيض والاحتلام والحبل

The reaching puberty of a girl is by way of menstruation, nocturnal emission, or pregnancy.

فإن لم يوجد فحتى يتم لها سبع عشرة سنة

If [none of] that exists, then [she is a minor] until she has completed seventeen years [of age].

وقال أبو يوسف ومحمد رحمهما الله تعالى: إذا تم للغلام والجارية خمس عشرة سنة فقد بلغ

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that when the boy and the girl have completed fifteen years of age then they have attained puberty.

و إذا راهق الغلام والجارية فأشكل أمرهما في البلوغ فقالا «قد بلغنا» فالقول قولهما، وأحكامهما أحكام البالغين

When a boy or girl approach puberty, and their position concerning majority is difficult [to ascertain], and they say that they have attained majority, then their statement [is accepted] and the judgements [on them] are the judgements on mature people.

On Insolvents

وقال أبو حنيفة رحمه الله تعالى: لا أحجر في الدين على المفلس، وإذا وجبت الديون على رجل مفلس وطلب غرماؤه حبسه والحجر عليه لم أحجر عليه، وإن كان له مالٌ لم يتصرف فيه الحاكم، ولكن يحبسه أبدا حتى يبيعه في دينه، و إن كان له دراهم ودينه دراهم قضاه القاضي بغير أمره، و إن كان دينه دراهم وله دنانير أو على ضد ذلك باعها القاضي في دينه

Abū Ḥanīfah, may Allah have mercy on him, said, I do not place a limitation on the legal competence of an insolvent person (*muflis*) due to a

debt. When many debts become due on the insolvent, and his creditors demand he be taken into custody and a limitation placed on his competence, I do not place a limitation on his legal competence. If he has some property, the judge (*ḥākim*) does not transact with it, but [rather], he takes him into custody indefinitely until he sells it for [the settlement of] his debt. If he has dirhams and his debt consists of dirhams, the judge should settle that without his authorisation.[433] If his debt is dirhams but he has dinars or vice versa, the judge should sell them for [the settlement of] his debt.

وقال أبو يوسف ومحمد رحمهما الله تعالى: إذا طلب غرماء المفلس الحجر عليه حجر القاضي عليه ومنعه من البيع والتصرف والإقرار حتى لا يضر بالغرماء، وباع ماله إن امتنع المفلس من بيعه، وقسمه بين غرمائه بالحصص، فإن أقر في حال الحجر بإقرار مال لزمه ذلك بعد قضاء الديون، وينفق على المفلس من ماله، وعلى زوجته وأولاده الصغار وذوي الأرحام

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said, when the creditors of the insolvent person demand that a limit be placed on his legal competence, the judge places a limit on his legal competence and prevents him from selling, transacting and ratifying so that creditors are not harmed thereby. If the insolvent refuses to sell his property, [the judge] sells it, and [the proceeds] are divided between the creditors according to the [respective] shares. If [the insolvent] does ratify the ratification of property during the state of the limitation on his legal competence, that is binding upon him after the discharge of the debts.[434] The insolvent is spent upon from his [own] property, as [also] are his wife, his small children and uterine relatives.

وإن لم يعرف للمفلس مال وطلب غرماؤه حبسه وهو يقول لا مال لي حبسه الحاكم في كل دين لزمه بدلا عن مال حصل في يده كثمن المبيع وبدل القرض، وفي كل دين التزمه بعقد كالمهر و الكفالة

If the insolvent has no known property, and his creditors demand his detention in custody, and he says, “I have no property,” the judge (*ḥākim*) should detain him in custody[435] for every debt that is binding on him in

exchange for property that is in his possession,[436] like the price of things sold and in exchange for a loan, and for every debt that is binding on him by a contract,[437] such as dowry (*mahr*)[438] and surety (*kafālah*) [bond].

ولم يحبسه فيما سوى ذلك كعوض المغصوب وأرش الجنايات إلا أن تقوم البينة بأن له مالا

[The judge (*ḥākim*)] should not detain him for anything other than that,[439] such as in replacement for usurped [goods] and compensation (*arsh*) for offences, unless evidence is produced that he does have property.

و يحبسه الحاكم شهرين أو ثلاثة أشهر سأل عن حاله: فإن لم ينكشف له مال خلى سبيله، وكذلك إذا قام البينة على أنه لا مال له

The judge should detain him for two or three months [as required], investigating his circumstances. If property of his is not discovered, he discharges him, as he does if clear proof is established that he has no property.

ولا يحول بينه وبين غرمائه بعد خروجه من الحبس، و يلازمونه ولا يمنعونه من التصرف والسفر، و يأخذون فضل كسبه فيقسم بينهم بالحصص

[The judge (*ḥākim*)] does not intervene between him and between his creditors after his leaving detention. [His creditors] pursue him but they do not prevent him from transacting [with his property], or travelling.[440] They take the surplus of his earnings and divide [it] amongst themselves according to the [respective] shares [in the debts].

وقال أبو يوسف ومحمد رحمهما الله تعالى: إذا فلسه الحاكم حال بينه وبين غرمائه إلا أن يقيموا البينة أنه قد حصل له مال

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that when the judge declares someone insolvent, then he intervenes between him and his creditors,[441] unless they produce clear proof that he has acquired property.

ولا يحجر على الفاسق إذا كان مصلحا لماله

The dissolute person (*fāsiq*) does not have a limitation placed on his legal competence if he treats his property in an orderly manner.[442]

والفسق الأصلي والطارئ سواء

Original dissoluteness and accidental dissoluteness are [treated] the same.

ومن أفلس وعنده متاع لرجل بعينه ابتاعه منه فصاحب المتاع أسوة للغرماء فيه

Whoever becomes insolvent and with him are specific goods [belonging to] another person who had purchased them from him, the owner of the goods is just like creditors [with regards] to them.[443]

كتاب الإقرار

IQRĀR – ACKNOWLEDGEMENT

إذا أقر الحر البالغ العاقل بحق لزمه إقراره، مجهولا كان ما أقر به أو معلوما، ويقال له: بين المجهول،فإن لم يبين أجبره الحاكم على البيان ، فإن قال «لفلان علي شيءٌ» لزمه أن يبين ماله قيمة

When a free, adult, sane person acknowledges a right [against himself], its acknowledgement is binding on him, whether what he has acknowledged is unknown or known. It is said to him, “Make the unknown [right] clear.” If he does not make it clear, the judge (*ḥākim*) compels him to make [it] clear. If he says, “So-and-so is due something from me,” it is binding upon him to make clear that which has a value.[444]

والقول فيه قوله مع يمينه إن ادعى المقر له أكثر منه

The [legally acceptable] statement is the statement of the one who acknowledges (*muqirr*)[445] along with his oath, if the one in whose favour the acknowledgement is made (*muqarr lahū*) claims more than that [amount].

وإذا قال «له علي مالٌ» فالمرجع في بيانه إليه، ويقبل قوله في القليل والكثير، فإن قال «له علي مالٌ عظيمٌ» لم يصدق في أقل من مائتي درهم، وإن قال « له علي دراهم كثيرةٌ» لم يصدق في أقل من عشرة دراهم، فإن قال « له علي دراهم» فهي ثلاثة إلا أن يبين أكثر منها، وإن قال «له علي كذا كذا درهما» لم يصدق في أقل من أحد عشر درهما، وإن قال « له كذا وكذا درهما» لم يصدق في أقل من أحد وعشرين درهما

When he says, “He is due some property from me,” then resort is made to him for its explanation, and his statement is accepted in both little [amounts]

or much. If he says, “He is due a tremendous amount of property from me,” he is not believed with respect to anything less than two hundred dirhams.[446] If he says, “He is due many dirhams from me,” he is not believed with respect to anything less than ten dirhams.[447] If he says, “He is due some dirhams from me,” they should be [understood to be] three, unless he clarifies that there are more than that [amount]. If he says, “He is due such-and-such [an amount of] dirhams from me,” he is not believed with respect to anything less than eleven dirhams. If he says, “He is due such-and-such [an amount of] dirhams,” he is not believed with respect to anything less than twenty-one dirhams.

و إن قال «له علي أو قبلي» فقد أقر بدين، و إن قال « له عندى»
أو «معى» فهو إقرار بأمانةٍ في يده

If he says, “He is due from me…,” or “…is owed by me…,” then he has acknowledged a debt. If he says, “I have for him…,” or “…with me…,” then that is acknowledgement of a trust [left] in his possession.

و إن قال له رجل (لى عليك ألف) فقال إتزنها أو انتقدها أو
أجلنى بها أو قد قضيتكها فهو إقرار

If a man says to him, “I am due a thousand [dirhams] from you,” and [in reply] he says: “Weigh them,” “Inspect them,” “Give me some time for them,” or “I have paid them to you,” then that is an acknowledgement.

ومن أقر بدين مؤجل فصدقه المقر له في الدين وكذبه في التأجيل
لزمه الدين حالا، ويستحلف المقر له في الأجل

Whoever acknowledges a deferred (*mu’ajjal*) debt, and the one in whose favour the acknowledgement is made (*muqarr lahū*) verifies the debt but denies the deferment, the debt [settlement] is immediately binding on him, and the one in whose favour the acknowledgement is made (*muqarr lahū*) is administered an oath regarding the term.

Making an Exception to an Acknowledgement

ومن أقر بدين واستثنى شيئا متصلا بإقراره صح الاستثناء، ولزمه الباقي، وسواء استثنى الأقل أو الأكثر، فإن استثنى الجميع لزمه الإقرار وبطل الاستثناء

Whoever acknowledges a debt and makes an exception of something connecting [it] to his acknowledgement, the exception is valid and the remainder is binding upon him,[448] and it is [deemed] the same whether he makes an exception of a little[449] or a lot,[450] but if he makes an exception of all of it, the acknowledgement is binding upon him and the exception is void.[451]

و إن قال «له علي مائة درهم إلا دينارا» أو «إلا قفيز حنطة» لزمه مائة درهم إلا قيمة الدينار أو القفيز، و إن قال «له علي مائة ودرهم» فالمائة كلها دراهم، و إن قال «له علي مائة وثوبٌ» لزمه ثوبٌ واحدٌ، والمرجع في تفسير المائة إليه

If someone says, “He is due one hundred dirhams from me except for one dinar,” or “… except for one *qafīz* of wheat,” one hundred dirhams less the value of one dinar or [less] the [value of one] *qafīz* is binding upon him. If he says, “He is due a hundred,[452] and one dirham from me,” then the hundred must all be dirhams. If he says, “He is due one hundred,[453] plus one garment from me,” the garment is binding upon him, and resort is made to him for the explanation of the one hundred.[454]

ومن أقر بحق وقال «إن شاء الله تعالى» متصلا بإقراره لم يلزمه الإقرار

Whoever acknowledges a right [against himself] and says, “*in shā Allāhu ta‘ālā* (Allah willing)” together with his acknowledgement, the acknowledgement is not binding upon him.

ومن أقر وشرط الخيار لنفسه لزمه الإقرار وبطل الخيار

Whoever makes an acknowledgement and stipulates a condition of option (*khiyār*), the acknowledgement is binding but the option is void.[455]

ومن أقر بدار واستثنى بناءها لنفسه فللمقر له الدار والبناء جميعا، وإن قال «بناء هذه الدار لي والعرصة لفلان» فهو كما قال

Whoever acknowledges a house [for someone] and excludes its structure for himself, then the house and the structure are the ownership of the one in whose favour the acknowledgement is made (*muqarr lahū*),[456] but if he says, "The structure of this house is for me and the courtyard is for so-and-so," it is as he says.[457]

ومن أقر بتمر في قوصرة لزمه التمر والقوصرة

Whoever acknowledges dates in a basket, the dates and the basket are [both] binding upon him.[458]

ومن أقر بدابة في إصطبل لزمه الدابة خاصة، وإن قال «غصبت ثوبا في منديل» لزماه جميعا، وإن قال «له علي ثوبٌ في ثوبٍ» لزماه جميعا وإن قال «له علي ثوب في عشرة أثواب» لم يلزمه عند أبي يوسف رحمه الله تعالى إلا ثوبٌ واحدٌ. وقال محمد رحمه الله تعالى: يلزمه أحد عشر ثوبا

Whoever acknowledges a [riding] animal in a stable, only the [riding] animal [not the stable] is binding upon him. If he says, "I have expropriated a cloth in a kerchief," then both of them, are binding upon him. If he says, "He is due from me a cloth inside a cloth," both of them are binding upon him. If he says, "He is due from me a cloth inside ten cloths," [then] nothing is binding upon him other than the one cloth, according to Abū Yūsuf, may Allah have mercy on him, but Muḥammad, may Allah have mercy on him, said that [all] eleven cloths are binding upon him.

ومن أقر بغصب ثوب وجاء بثوب معيب فالقول قوله فيه مع يمينه، وكذلك لو أقر بدراهم وقال: هي زيوف، وإن قال «له علي خمسة في خمسة» يريد به الضرب والحساب لزمه خمسة واحدة، وإن قال «أردت خمسة مع خمسة» لزمه عشرة

Whoever acknowledges the expropriating of a garment and brings a blemished garment, then his statement together with his oath is the statement

[that is believed] regarding that, and likewise, if he acknowledges [some] dirhams and says that they are defective [his statement with his oath is accepted]. If he says, “He is due five in five from me,” and by that he intends multiplication and sum, [then] only one five is binding upon him, but if he says, “…I intended five with five,” then ten is binding upon him.

و إذا قال «له علي من درهم إلى عشرة» لزمه تسعة عند أبي حنيفة رحمه الله تعالى يلزمه الابتداء وما بعده وتسقط الغاية، وقالا رحمهما الله تعالى: يلزمه العشرة كلها

When he says, “He is due from me from one to ten dirhams,” [then] nine dirhams are binding upon him, according to Abū Ḥanīfah, may Allah have mercy on him; the beginning and whatever is after that are binding upon him, and the limits are dropped.[459] The two of them,[460] may Allah have mercy on them, however, said that all ten [dirhams] are binding upon him.

و إن قال «له علي ألف درهم من ثمن عبد اشتريته منه ولم أقبضه» فإن ذكر عبدا بعينه قيل للمقر له: إن شئت فسلم العبد وخذ الألف، و إلا فلا شيء لك عليه

If he says, “He is due from me a thousand dirhams for the price of a slave whom I bought from him but did not take possession of,” then if he mentions a specific slave, it is said to the one in whose favour the acknowledgement is made (*muqarr lahū*), “If you want, hand over the slave and take the thousand, and if not, then there you have nothing against him.”

و إن قال «له علي ألف من ثمن عبد» ولم يعينه لزمه الألف في قول أبي حنيفة رحمه الله تعالى

If he says, “He is due from me a thousand for the price of a slave” and does not specify [the slave], the thousand are binding upon him, according to Abū Ḥanīfah, may Allah have mercy on him.

ولو قال « علي ألف درهم من ثمن خمر أو خنزير » لزمه الألف ولم يقبل تفسيره، وإن قال «له علي ألف من ثمن متاع وهي زيوفٌ» فقال المقر له «جيادٌ» لزمه الجياد في قول أبي حنيفة رحمه الله تعالى، وقال أبو يوسف و محمد رحمهما الله تعالى: إن قال ذلك موصولا صُدق ، و إن قاله مفصولا لا يصدق

If he says, "I owe a thousand dirhams for the price of wine or pigs," the thousand are binding upon him and his explanation is not accepted. If he says, "He is due a thousand for the price of baggage, and they are counterfeit," and the one in whose favour the acknowledgement is made (*muqarr lahū*) says, "[They are] genuine," [then] according to the verdict of Abū Ḥanīfah, may Allah have mercy on him, genuine [dirhams] are binding upon him. Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that if [the one in whose favour the acknowledgement is made (*muqarr lahū)*] says that in connection with [the statement of the person who acknowledges [the debt], then] that is believed, but if he says that disconnected, [then] it is not believed.

ومن أقر لغيره بخاتم فله الحلقة والفص، و إن أقر له بسيف فله النصل والجفن والحمائل، و إن أقرله بحجلة فله العيدان والكسوة

Whoever acknowledges a ring belonging to someone else, then he has the annulet and [also] the stone.[461] If he acknowledges a sword of his, then he has the blade, [the hilt,] the belt and the scabbard. If he acknowledges a sedan of his, then he has the wood and the covering.

و إن قال «لحمل فلانة علي ألف درهم» فإن قال أوصى له فلان أو مات أبوه فورثه فالإقرار صحيح، و إن أبهم الإقرار لم يصح عند أبي يوسف رحمه الله تعالى، وقال محمد رحمه الله تعالى يصح

If he says, "The foetus of such-and-such a woman is due a thousand dirhams from me," then if he said, "… so-and-so had bequeathed it to him," or "… its father died and it inherits him," then the acknowledgement is valid. If he makes the acknowledgement vague, it is not valid, according to Abū Yūsuf, may Allah have mercy on him, but Muḥammad, may Allah have

mercy on him, said that it is valid.

وإن أقر بحمل جارية أو حمل شاة لرجل صح الإقرار ولزمه

If he acknowledges the foetus of a slave woman or the foetus of a sheep or goat belonging to a man, [then] the acknowledgement is valid and it is binding upon him.

Confession on Deathbed

وإذا أقر الرجل في مرض موته بديون وعليه ديون في صحته وديون لزمته في مرضه بأسباب معلومة فدين الصحة والدين المعروف بالأسباب مقدم، فإذا قضيت وفضل شيء منها كان فيما أقر به في حال المرض

When a person acknowledges during his final illness (*maraḍ al-mawt*)[462] some debts, and he owes debts [accumulated] during his good health as well as debts that became binding upon him during his illness due to known factors, then the debts [incurred] in good health and the debt of which the factors are known are given priority.[463] Thus, when they have been discharged and something is left over from them, it is [spent on] whatever he acknowledged during his illness.

وإن لم يكن عليه ديون في صحته جاز إقراره وكان المقر له أولى من الورثة

If he does not owe debts from his [time of] good health, [then] his acknowledgement is valid, and the one in whose favour the acknowledgement is made (*muqarr lahū*) has more right than the heirs.

وإقرار المريض لوارثه باطل إلا أن يصدقه فيه بقية الورثة

The acknowledgement of an ill person [on his deathbed] on behalf of his heir is void unless the rest of the heirs affirm it.

ومن أقر لأجنبي في مرض موته ثم قال هو ابني ثبت نسبه منه وبطل إقراره له، ولو أقر لأجنبية ثم تزوجها لم يبطل إقراره لها

Whoever acknowledges in favour of a stranger during his terminal illness,

and then says, “He is my son,” his lineage is established by that [statement] and the acknowledgement in his favour is void. If, however, he acknowledges in favour of a female stranger, and then marries her, his acknowledgement for her is not void.

ومن طلق إمرأته في مرض موته ثلاثا ثم أقر لها بدين ومات فلها الأقل من الدين ومن ميراثها منه

Whoever divorces his wife thrice[464,465] during his terminal illness, and then acknowledges a debt due to her and dies, then she has the lesser [amount] of the debt or of her inheritance from him.[466]

ومن أقر بغلام يولد مثله لمثله وليس له نسب معروف أنه ابنه وصدقه الغلام ثبت نسبه منه وإن كان مريضا، ويشارك الورثة في الميراث

Whoever acknowledges in favour of a boy, the like of whom is born to someone like him,[467] and there is no known lineage for him [showing] that he is his son, and the boy confirms it, [then] his lineage from [the one who acknowledges paternity] is established even though [the person acknowledging paternity] is [terminally] ill. [Moreover,] he has a share in the inheritance with the [other] heirs.

ويجوز إقرار الرجل بالوالدين والزوجة والولد والمولى، ويقبل إقرار المرأة بالوالدين والزوج والمولى، ولا يقبل إقرارها بالولد إلا أن يصدقها الزوج في ذلك أو تشهد بولادتها قابلة

The acknowledgement of a man regarding parents, wife, child and master is permitted.[468] The acknowledgement of a woman regarding parents, husband and master is accepted, but her acknowledgement regarding the child is not accepted unless the husband confirms her in that [regard], or the midwife testifies to her giving birth [to that child].

ومن أقر بنسب من غير الوالدين والولد – مثل الأخ والعم – لم يقبل إقراره بالنسب، فإن كان له وارث معروف قريب أو بعيد فهو أولى بالميراث من المقر له، فإن لم يكن له وارث استحق المقر له ميراثه

Whoever acknowledges to a lineage from other than [his known] parents or child – like brother and paternal uncle – his acknowledgement regarding the lineage is not accepted.[469] Thus, if he has a known heir, close or distant, then he is more worthy to the inheritance than the one in whose favour the acknowledgement is made (*muqarr lahū*),[470] but if he has no heir, the one in whose favour the acknowledgement is made (*muqarr lahū*) is entitled to his inheritance.[471]

ومن مات أبوه فأقر بأخ لم يثبت نسب أخيه منه ويشاركه في الميراث

If the father of someone dies and he acknowledges a brother, the lineage of his brother is not proven and he shares [with] him in the inheritance.

كتاب الإجارة

IJĀRAH – HIRE/LEASE

الإجارة عقد على المنافع بعوض، ولا تصح حتى تكون المنافع معلومة والأجرة معلومة

Ijārah is a contract [based] on benefits [in return] for a consideration; it is not valid unless the benefits are known and the remuneration is [also] known.

وما جاز أن يكون ثمنا في البيع جاز أن يكون أجرة في الإجارة

Whatever is valid as payment (*thaman*) in sale (*bay‘*) is [also] valid as remuneration in *ijārah.*

والمنافع تارة تصير معلومة بالمدة كاستئجار الدور للسكنى والأرضين للزراعة، فيصح العقد على مدة معلومة أي مدة كانت، وتارة تصير معلومة بالعمل والتسمية كمن استأجر رجلا على صبغ ثوب أو خياطة ثوب، أو استأجر دابة ليحمل عليها مقدارا معلوما إلى موضع معلوم أو يركبها مسافة معلومة، وتارة تصير معلومة بالتعيين والإشارة كمن استأجر رجلا لينقل هذا الطعام إلى موضع معلوم

The benefits sometimes become known:

1. By duration, like letting houses for tenancy, or [leasing] lands for cultivation. Thus, the contract is valid for a known duration, whatever the duration;
2. They sometimes become known by the work and the appellation, like someone who hires a man to dye fabric, or to sew fabric, or who hires a beast of burden to carry a known amount on it to a known location, or to ride on it [for] a known distance; and
3. They sometimes become known by specification and indication, like someone who hires a man to deliver this [particular] food to a known location.

ويجوز استئجار الدور والحوانيت للسكنى، وإن لم يبين ما يعمل فيها، وله أن يعمل كل شيء إلا الحدادة والقصارة والطحن

It is permitted to rent houses and shops for tenancy, even though someone does not express what he will do in them. He may do anything [in them] except smithery,[472] bleaching and milling.[473,474]

ويجوز استئجار الأراضي للزراعة وللمستأجر الشرب والطريق و إن لم يشترط، ولا يصح العقد حتى يسمي ما يزرع فيها أو يقول: على أن يزرع فيها ما شاء

It is permitted to rent lands for cultivation, and the tenant (*musta'jir*) enjoys [the right of] irrigation and passage, even if he did not stipulate [it]. The contract is not valid until he specifies what he will cultivate in it,[475] or he says that it is on [the condition] that he cultivate in it whatever he wants.[476]

ويجوز أن يستأجر الساحة ليبني فيها أو يغرس فيها نخلا أو شجرا، فإذا انقضت مدة الإجارة لزمه أن يقلع البناء والغرس ويسلمها فارغة، إلا أن يختار صاحب الأرض أن يغرم له قيمة ذلك مقلوعا يتملكه أو يرضى بتركه على حاله فيكون البناء لهذا والأرض لهذا

It is permitted to lease a vacant field [in order] to build on it, or to plant date-palms or trees in it. When the period of the lease expires, it is binding upon [the tenant] to remove the buildings and the plants and to hand it over vacant [to the landlord], unless the landlord chooses to pay him the value of that, stripped,[477] and takes possession of it, or is content with leaving it in its [current] state, so the buildings will be for this [lessee/ tenant], and the land for this [lessor/landlord].[478]

ويجوز استئجار الدواب للركوب والحمل، فإن أطلق الركوب جاز له أن يركبها من شاء، وكذلك إن استأجر ثوباً للبس وأطلق

It is permitted to hire animals for riding and for carriage. If one uses 'riding' unqualifiedly, it is permitted for him to mount whomsoever he wishes on it,[479] and likewise, if he hires a garment to wear and he uses it

unqualifiedly.

فإن قال له: على أن يركبها فلان، أو يلبس الثوب فلان، فأركبها غيره أو ألبسه غيره، كان ضامنا إن عطبت الدابة أو تلف الثوب، وكذلك كل ما يختلف باختلاف المستعمل

If [the lessor] says to [the lessee], "…on the condition that so-and-so will ride it," or "…so-and-so will wear the garment," but he mounts someone other than him, or he makes someone other than him wear [the garment], [the lessee] is liable if the animal dies, or if the garment is ruined, and likewise, all that which changes by the disparity of the user.[480]

فأما العقار وما لا يختلف باختلاف المستعمل، فإن شرط سكنى واحد بعينه فله أن يسكن غيره، و إن سمى نوعا و قدرا يحمله على الدابة مثل أن يقول «خمسة أقفزة حنطة» فله أن يحمل ما هو مثل الحنطة في الضرر أو أقل كالشعير والسمسم، وليس له أن يحمل ما هو أضر من الحنطة كالملح والحديد والرصاص

With regards to real estate (*'aqār*), and that which does not change due to the disparity of the user, if [the tenant] stipulates the residence of one specific person he may house another person [there], and [likewise], if he mentions one type and one amount that he will load on the animal, for example that he says, "…five *qafīzs* of wheat," then he may load that which is like wheat in inconvenience,[481] or less, like barley and sesame, but he is not [permitted] to load that which is more difficult than wheat, such as salt, iron and lead.

فإن استأجرها ليحمل عليها قطنا سماه فليس له أن يحمل مثل وزنه حديدا، و إن استأجرها ليركبها فأردف معه رجلا آخر فعطبت ضمن نصف قيمتها إن كانت الدابة تطيقهما، ولا يعتبر بالثقل، و إن استأجرها ليحمل عليها مقدارا من الحنطة فحمل عليها أكثر منه فعطبت ضمن ما زاد من الثقل، و إن كبح الدابة بلجامها أو ضربها فعطبت ضمن عند أبي حنيفة رحمه الله تعالى، و قال أبو يوسف و محمد رحمهما الله تعالى: لا يضمن

If [the lessee] hires [the animal] to load cotton upon it, which he designates, then he has no right to load iron [upon it] of the same weight.[482] If he hires it to ride [on], and he mounts another person on it behind him, and thus it dies, [the lessee] is liable for half its value, if the animal was able to bear them both, and the weight will not be taken into account. If he hires it to load a [specific] quantity of wheat upon it, and he loads more than that upon it, and thus it dies, he is liable for whatever was in excess of the [specified] weight. If he restrains the animal by its reins or hits it and it dies, he is liable [for compensation], according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he is not liable [for anything].

Types of Hired Persons (*Ujarā'*)

والأجراء على ضربين: أجير مشترك، وأجير خاص

Hired persons (*ujarā'*) are of two types:

1. An employee [held] in common (*ajīr mushtarak*),[483] and
2. A private employee (*ajīr khāṣṣ*).[484]

The Employee [Held] in Common

فالمشترك: من لا يستحق الأجرة حتى يعمل كالصباغ والقصار، والمتاع أمانة في يده: إن هلك لم يضمن شيئاً عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يضمنه

The employee [held] in common is someone who is not entitled to remuneration until he has performed the work, like the dyer and the bleacher, and the goods are a trust in his possession; if they are ruined, he is not liable for anything, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[485] may Allah have mercy on them, said that he is liable [to compensate] it.

وما تلف بعمله كتخريق الثوب من دقه وزلق الحمال وانقطاع الحبل الذي يشد به المكاري الحمل وغرق السفينة من مدها مضمون إلا أنه لا يضمن به بنى آدم فمن غرق في السفينة أو سقط من الدابة لم يضمنه

That which is ruined by his work, like the ripping of cloth by his beating, the tripping of the porter, the rope breaking which the [animal] hirer (*mukārī*) ties the burden with, and the boat sinking due to pulling it, [for all of them, the hireling] is liable except that someone will not be liable for a human, so someone who drowns with the boat, or falls from the [riding] animal, then he [the hireling] is not liable [to pay compensation].

و إذا فصد الفصاد أو بزغ البزاغ ولم يتجاوز الموضع المعتاد فلا ضمان عليهما فيما عطب من ذلك و إن تجاوزه ضمن

When a phlebotomist performs phlebotomy[486] or a surgeon makes an incision [in an animal] and it does not go beyond the normal location, [then] neither of the two are liable for what perishes due to that,[487] but if it does go beyond it, [the phlebotomist or the surgeon] is liable [to pay compensation even though the owner authorised the surgery].

The Private Hireling

والأجير الخاص: هو الذي يستحق الأجرة بتسليم نفسه في المدة، و إن لم يعمل، كمن استأجر رجلا شهرا للخدمة أو لرعي الغنم

The private hireling is someone who is entitled to remuneration for surrendering his person for a period, even if he does not work, as when one hires a man for service or for pasturing sheep.

ولا ضمان على الأجير الخاص فيما تلف في يده ولا في ما تلف من عمله إلا أن يتعدى فيضمن

There is no liability on the private hireling for that which is destroyed whilst in his possession, nor for that which is destroyed due to his work,[488] unless he violates [normal precautions], in which case he is liable.[489]

That which Invalidates *Ijārah*

والإجارة تفسدها الشروط كما تفسد البيع

The [breach of] conditions invalidates *ijārah just* as it invalidates sales.

ومن استأجر عبدا للخدمة فليس له أن يسافر به إلا أن يشترط
عليه ذلك في العقد

Whoever hires a slave for service cannot take him on a journey unless he stipulates that as a condition in the contract.[490]

ومن استأجر جملا ليحمل عليه محملا وراكبين إلى مكة جاز،
وله المحمل المعتاد، وإن شاهد الجمال المحمل فهو أجود

Whoever hires a camel so that he may convey a litter and two riders upon it to Makkah, it is permitted and he may [only load] a customary litter [upon it]. It is better for the cameleer to see the litter.

وإن استأجر بعيرا ليحمل عليه مقدارا من الزاد فأكل منه في
الطريق جاز له أن يرد عوض ما أكل

If someone hires a camel so that he may load an amount of supplies (*zād*) on it, and eats of them on the way, it is permitted for him to replenish [the supplies] in place of what he has eaten.[491]

When Remuneration becomes Due

والأجرة لا تجب بالعقد

Remuneration does not become due by virtue of [entering into the] contract [of *ijārah]*.[492]

وتستحق بأحد ثلاثة معان: إما بشرط التعجيل، أو بالتعجيل من
غير شرط، أو باستيفاء المعقود عليه

It becomes an entitlement [to the hired person (*mūjir*)] by one of three factors, either:

1. By the precondition of promptness [of payment],[493]

2. By promptness [of payment] unconditionally, or
3. By fulfilment of the contractual obligation.[494]

ومن استأجر دارا فللمؤجر أن يطالبه بأجرة كل يوم إلا أن يبين وقت الاستحقاق في العقد

Whoever rents a house, the lessor may demand remuneration (i.e. rent) daily, unless he stipulates the time of maturity [of payment] in the contract.

ومن استأجر بعيرا إلى مكة فللجمال أن يطالبه بأجرة كل مرحلةٍ

Whoever hires a camel to Makkah,[495] the cameleer may demand the remuneration (i.e. fare) at each stage[496] from him.

وليس للقصار والخياط أن يطالب بالأجرة حتى يفرغ من العمل إلا أن يشترط التعجيل

But the fuller and the tailor may not demand remuneration until they have completed the work, unless they stipulate the condition of promptness [of payment].[497]

ومن استأجر خبازا ليخبز له في بيته قفيز دقيق بدرهم لم يستحق الأجرة حتى يخرج الخبز من التنور

Whoever hires a baker to bake for him in the house [of the lessee] one *qafīz* of flour, for one dirham, [the baker] is not entitled to remuneration until he has taken the [cooked] bread out of the oven.[498]

ومن استأجر طباخا ليطبخ له طعاما للوليمة فالغرف عليه

Whoever hires a chef to cook food for him at a wedding banquet (*walīmah*), the ladling is [also] incumbent upon [that chef].

ومن استأجر رجلا ليضرب له لبنا استحق الأجرة إذا أقامه عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى: لا يستحقها حتى يشرجه

Whoever hires a man to make bricks for him [the man] is entitled to remuneration when he sets them up [after they have dried], according to] Abū

Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he is not entitled to it until he has stacked them [after they have been baked].

وإذا قال للخياط: إن خطت هذا الثوب فارسيا فبدرهم، وإن خطته روميا فبدرهمين، جاز، وأي العملين عمل استحق الأجرة

When someone says to the tailor, "If you sew this cloth according to Persian fashion, then it is for one dirham, but if you sew it according to Roman fashion, then it is for two dirhams," it is permitted, and whichever of the two jobs he undertakes, he is entitled to remuneration [accordingly].

وإن قال: إن خطته اليوم فبدرهم، وإن خطته غدا فبنصف درهم، فإن خاطه اليوم فله درهم، وإن خاطه غدا فله أجرة مثله عند أبي حنيفة رحمه الله تعالى ولا يتجاوز به نصف درهم، وقال أبو يوسف ومحمد رحمهما الله تعالى: الشرطان جائزان و أيهما عمل استحق الأجرة

If someone says [to the tailor], "If you sew it today it is for a dirham, but if you sew it tomorrow then it is for half a dirham," then if he stitches it today, then he has one dirham, and if he stitches it tomorrow, then he has its customarily reasonable amount (*mithl*) [in remuneration],[499] according to Abū Ḥanīfah, may Allah have mercy on him, and it should not exceed half a dirham,[500] but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that both conditions are permitted, and whichever of the two he undertakes, he is entitled to the remuneration.

وإن قال: إن سكنت في هذا الدكان عطارا فبدرهم في الشهر، وإن سكنته حدادا فبدرهمين، جاز

If someone says [to a tenant], "If you house a perfumer in this shop, it is for one dirham per month, but if you house a blacksmith, then it is for two dirhams," it is permitted.

وأي الأمرين فعل استحق المسمى فيه عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: الإجارة فاسدة

Whichever of the two undertakings he performs, he is entitled to [the

remuneration] mentioned in it, according to Abū Ḥanīfah, may Allah have mercy on him. They,[501] may Allah have mercy on them, said that the [contract of] *ijārah* is invalid.

ومن استأجر دارا كل شهر بدرهم فالعقد صحيحٌ في شهر واحد وفاسدٌ في بقية الشهور، إلا أن يسمي جملة الشهور معلومة، فإن سكن ساعة من الشهر الثانى صح العقد فيه ولم يكن للمؤجر أن يخرجه إلى أن ينقضي الشهر، وكذلك حكم كل شهر يسكن في أوله يوما أو ساعة

If someone rents a house every month for a dirham, the contract is valid for one month [only] and invalid for the rest of the months, unless [the tenant] mentions all of the determined months,[502] and thus, if he resides [there even for] an hour from the second month, the contract is valid in it, and [the rent] is binding upon him, and the landlord is not able to evict him until the rented month elapses. Likewise, [for] the ruling of every month, in the beginning of which he resides a day or [even] an hour.

وإذا استأجر دارا شهرا بدرهم فسكن شهرين فعليه أجرة الشهر الأول ولا شيء عليه من الشهر الثانى

If he rents a house on a monthly basis for a dirham and resides there for two months, the rent of the first month is due from him but there is nothing due from him for the second month.[503]

وإذا استأجر داراً سنة بعشرة دراهم جاز، وإن لم يسم قسط كل شهر من الأجرة

If someone rents a house for a year for ten dirhams, it is valid, even if he does not mention the instalment of rent for each month.

ويجوز أخذ أجرة الحمام والحجام

It is permitted to take remuneration for [use of] the public bath and [the services of] the cupper (*ḥajjām).*

ولا يجوز أخذ أجرة عسب التيس

Taking payment for conjoining a [male with a female] goat is not allowed.

ولا يجوز الاستئجار على الأذان والإقامة وتعليم القرآن و الحج
ولا يجوز الالستئجار على الغناء والنوح

It is not permitted to hire [someone] for [calling] the *adhān*, for [saying] the *iqāmah*, for teaching the Qur'ān and the *ḥajj*, and neither is it allowed to hire [someone] for singing or for mourning.

ولا تجوز إجارة المشاع عند أبي حنيفة رحمه الله تعالى وقالا
رحمهما الله تعالى : إجارة المشاع جائزة

According to Abū Ḥanīfah, may Allah have mercy on him, the letting of shared property is not allowed,[504] but they,[505] may Allah have mercy on them, said that the letting of shared property is permitted.

ويجوز استئجار الظئر بأجرة معلومة، ويجوز بطعامها وكسوتها
عند أبي حنيفة رحمه الله تعالى

The hiring of a wet nurse (*ẓi'r*) is permitted for specified payment, and it is permitted in exchange for feeding her and clothing her, according to Abū Ḥanīfah, may Allah have mercy on him.

وليس للمستأجر أن يمنع زوجها من وطئها، فإن حبلت كان لهم
أن يفسخوا الإجارة إذا خافوا على الصبي من لبنها

The hirer should not prevent her husband from having sexual intercourse with her. If she becomes pregnant, they may rescind the [contract of] *ijārah* when they fear for the child regarding her milk.

وعليها أن تصلح طعام الصبي، و إن أرضعته في المدة بلبن شاة
فلا أجرة لها

She must make the food of the child adequate. If she suckles him during the period [of her contract] with sheep or goat's milk,[506] then there is no remuneration for her.

وكل صانع لعمله أثر في العين كالقصار والصباغ فله أن يحبس
العين بعد الفراغ من عمله حتى يستوفي الأجرة، ومن ليس لعمله
أثر في العين فليس له أن يحبس العين للأجرة كالحمال والملاح

Every artisan, whose work has a [visible] effect on the item, such as the fuller and the dyer, may retain the item after the completion of his work [on it] until he receives the remuneration, but whoever's work has no [visible] effect on the item, may not retain the item until [he receives] remuneration, such as the porter and the boatman.

و إذا اشترط على الصانع أن يعمل بنفسه فليس له أن يستعمل
غيره، فإن أطلق له العمل فله أن يستأجر من يعمله

When someone places a condition on the artisan that he work on his own, then [that artisan] may not employ anyone else.[507] If he places no conditions on the work for him, then he may hire someone who will do it.[508]

Differences between the Lessor and the Lessee

و إذا اختلف الخياط والصباغ وصاحب الثوب فقال صاحب
الثوب للخياط: أمرتك أن تعمله قباء، وقال الخياط: قميصا، أو
قال صاحب الثوب للصباغ: أمرتك أن تصبغه أحمر فصبغته أصفر
فالقول قول صاحب الثوب مع يمينه، فإن حلف فالخياط ضامن

If the tailor, the dyer and the owner of the fabric differ [on an issue], and the owner of the fabric says to the tailor, "I told you to make it into an outer garment (*qabā')*," and the tailor says, "…a shirt" or the owner of the cloth says to the dyer, "I told you to dye it red but you dyed it yellow," then the [reliable] statement is the word of the owner of the fabric along with his oath. If he swears an oath, the tailor is liable.[509]

وإن قال صاحب الثوب: عملته لي بغير أجرة، وقال الصانع: بأجرة، فالقول قول صاحب الثوب مع يمينه عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف رحمه الله تعالى: إن كان حريفا له فله الأجرة، وإن لم يكن حريفا له فلا أجرة له، وقال محمد رحمه الله تعالى: إن كان الصانع مبتذلا لهذه الصنعة بالأجرة فالقول قوله مع يمينه أنه عمله بأجرة

If the owner of the fabric says, "You have worked [on] it for me for no pay," and the artisan says, "[I worked on it] for pay," then the [definitive] statement is the word of the owner of the cloth, along with his oath, according to Abū Ḥanīfah, may Allah have mercy on him. But Abū Yūsuf, may Allah have mercy on him, said, "If he is a fellow artisan of his, then there is pay for him, but if he is not a fellow artisan of his, then there is no pay for him." Muḥammad, may Allah have mercy on him, however, said, "If the artisan is known to take pay for this [particular] work, then the [definitive] statement is his word along with his oath, that he worked on it for pay."

والواجب في الإجارة الفاسدة أجرة المثل لا يتجاوز به المسمى

In the invalid lease (*ijārah fāsidah*), payment of what is the ordinary rate (*mithl*)[510] is obligatory, which does not exceed what has been prescribed.[511]

وإذا قبض المستأجر الدار فعليه الأجرة وإن لم يسكنها، فإن غصبها غاصب من يده سقطت الأجرة

When the tenant takes possession of the house the rent is due from him, even though he does not reside in it,[512] [but] if a usurper expropriates it from his possession, the rent lapses.

وإن وجد بها عيبا يضر بالسكنى فله الفسخ

If [the tenant] finds a blemish in it, which is detrimental to residing [therein], then he has the right to rescind [the lease].

وإذا خربت الدار أو انقطع شرب الضيعة أو انقطع الماء عن الرحى انفسخت الإجارة

If the house becomes ruined, irrigation to the land ceases, or the water to the water-mill discontinues, the lease (*ijārah*) is rescinded.[513]

وإذا مات أحد المتعاقدين وقد عقد الإجارة لنفسه انفسخت الإجارة، وإن كان عقدها لغيره لم تنفسخ

When either of the two parties to the contract dies, and he had entered into the lease (*ijārah*) contract for himself, the lease (*ijārah*) is rescinded. If its contract was for someone other than himself [who is alive], it is not rescinded.

ويصح شرط الخيار في الإجارة كما في البيع

Stipulating an option (*khiyār*) in the lease (*ijārah*) is valid, just as it is in sale.

وتنفسخ الإجارة بالأعذار، كمن استأجر دكانا في السوق ليتجر فيه فذهب ماله وكمن أجر دارا أو دكانا ثم أفلس فلزمته ديون لا يقدر على قضائها إلا من ثمن ما آجر فسخ القاضي العقد وباعها في الدين

A lease (*ijārah*) is rescinded by [valid] excuses, such as someone who rents a shop in the market in which to carry on business, then his merchandise is destroyed,[514] and such as someone (i.e. a landlord) who lets a house or a shop, then becomes bankrupt and debts are due upon him which he is unable to settle except from the price of what he has let, [in which case] the judge rescinds the contract and sells it [in order to settle] the debt.[515]

ومن استأجر دابة ليسافر عليها ثم بدا له من السفر فهو عذر، وإن بدا للمكاري من السفر فليس ذلك بعذر

Whoever hires a [riding] animal to travel upon, then it occurs to him to [postpone] the journey, then that is a [valid] excuse,[516] but if it occurs to the one who lets [the animal as a mount, to postpone] the journey, then that is not a [valid] excuse.[517]

كتاب الشفعة

SHUF'AH – PREEMPTION

الشفعة واجبة للخليط في نفس المبيع، ثم للخليط في حق المبيع، كالشرب والطريق، ثم للجار

Preemption (*shuf'ah*) is a right[518] of:

1. The associate (*khalīṭ*)[519] in the object of sale, then of,
2. The associate in the right of the object of sale, such as [the right of] irrigation and passage,[520] [and] then of,
3. The neighbour.[521]

وليس للشريك في الطريق والشرب والجار شفعة مع الخليط

In the [presence of the] associate, there is no [right of] preemption for the partner (*sharīk*) in passage and irrigation, nor for the neighbour.[522]

فإن سلم الخليط فالشفعة للشريك في الطريق، فإن سلم أخذها الجار

If the associate gives up [his right], then the preemption belongs to the partner in passage, and if he [also] gives up [this right], then the neighbour may take it.

والشفعة تجب بعقد البيع وتستقر بالإشهاد

Preemption is concluded with a contract of sale, and it is settled by making witnesses.

وتملك بالأخذ إذا سلمها المشتري أو حكم بها حاكمٌ، وإذا علم الشفيع بالبيع أشهد في مجلسه ذلك على المطالبة، ثم ينهض منه فيشهد على البائع إن كان المبيع في يده أو على المبتاع أو عند العقار، فإذا فعل ذلك استقرت شفعته ولم تسقط بالتأخير عند أبي حنيفة رحمه الله تعالى، وقال محمد رحمه الله تعالى: إن تركها من غير عذر شهرا بعد الإشهاد بطلت شفعته

[The preemptor (*shafī‘)*] becomes the owner by acquiring it when the buyer surrenders it to him, or [when] a judge (*ḥākim*) gives that as a judgement. When the preemptor comes to know of the sale, he should call witnesses within that [very] session of it, regarding the demand [of his right].[523] Then he should depart from there and call witnesses against the seller, if the sold commodity is in his possession, or against the purchaser, or at the real estate.[524] Once he has done that, his preemption is concluded, and it does not lapse by [any delay],[525] according to Abū Ḥanīfah, may Allah have mercy on him. Muḥammad, may Allah have mercy on him, however, said that after making witnesses, if he leaves it without any excuse for a month, his [right of] preemption is void.

والشفعة واجبة في العقار، وإن كان مما لا يقسم كالحمام و الرحى والبئر والدور الصغار

There is a right of preemption in real estate even if it is indivisible, like a hot [public] bath, a quern, a well and small houses.

ولا شفعة في البناء والنخل إذا بيع بدون العرصة، ولا شفعة في العروض والسفن

There is no [right of] preemption in a building nor in date-palms[526] when sold without the courtyard, and there is no [right of] preemption in goods and boats.

والمسلم والذمي في الشفعة سواء

The Muslim and the *dhimmī* are equal in [the rights of] preemption.

وإذا ملك العقار بعوض هو مال وجبت فيه الشفعة

When one gains ownership of real estate for a consideration which is wealth, there is a right of preemption in it.[527]

ولا شفعة في الدار التي يتزوج الرجل عليها أو يخالع المرأة بها أو
يستأجر بها دارا أو يصالح من دم عمد أو يعتق عليها عبدا أو يصالح
عنها بإنكار أو سكوت، فإن صالح عنها بإقرار وجبت فيها الشفعة

There is no [right of] preemption in the house:

1. On the basis of which a man performs marriage,[528]
2. By which a woman gains divorce at her own instance (*khul*‘),[529]
3. For which one rents [another] house,[530]
4. [By which] one conciliates in intentional killing (*qatl ‘amd*),[531]
5. By which one sets free a slave,[532]
6. Regarding which one conciliates by a negation or silence.[533]

If he conciliates with an acknowledgement or confession,[534] [then] preemption is incumbent in it.

Procedure of a Lawsuit

و إذا تقدم الشفيع إلى القاضي فادعى الشراء وطلب الشفعة سأل
القاضي المدعى عليه عنها، فإن اعترف بملكه الذي يشفع به، و إلا
كلفه بإقامة البينة

When the preemptor approaches the judge, files a lawsuit against the purchase and claims preemption, the judge shall question the defendant regarding that. If [the defendant] confesses to the ownership of that which is the subject-matter of the preemption [it is established], otherwise, he shall instruct [the plaintiff] to produce evidence.

فإن عجز عن البينة استحلف المشتري بالله ما يعلم أنه مالك للذي
ذكره مما يشفع به، فإن نكل عن اليمين أو قامت للشفيع بينة سأله
القاضي: هل ابتاع أم لا؟ فإن أنكر الابتياع قيل للشفيع: أقم البينة

Thus, if [the plaintiff] is unable to [provide] evidence, [the judge] demands an oath from the purchaser, by Allah, that he has no knowledge that

he [himself] is the owner of that which [the plaintiff] has mentioned, and for which he claims preemption. If he refrains from [taking] the oath, or [if] evidence is established for the preemptor, the judge asks him whether he had purchased [it] or not; if he denies the purchase, [then] it is said to the preemptor, “Produce evidence.”

فإن عجز عنها استحلف المشتري بالله ما ابتاع أو بالله ما يستحق على هذه الدار شفعة من الوجه الذي ذكره

If [the plaintiff] is unable to do that (i.e. produce evidence), he [the judge] demands an oath from the purchaser that by Allah, he has not purchased [it], or that by Allah, he [the preemptor] is not entitled to preemption in this house from the aspect that he mentions.

وتجوز المنازعة في الشفعة، وإن لم يحضر الشفيع الثمن إلى مجلس القاضي، وإذا قضى القاضي له بالشفعة لزمه إحضار الثمن

It is permitted to raise the dispute in preemption [with the judge], even if the preemptor does not present the payment in the session of the judge. When the judge has decided the preemption in his favour,[535] then production of the payment is binding upon him.

وللشفيع أن يرد الدار بخيار العيب والرؤية

The preemptor may return the house because of a stipulated option [that he can do so if there is a] blemish or because of examination.[536]

وإن أحضر الشفيع البائع والمبيع في يده فله أن يخاصمه في الشفعة، ولا يسمع القاضي البينة حتى يحضر المشتري، فيفسخ البيع بمشهد منه، ويقضي بالشفعة على البائع، ويجعل العهدة عليه

When the preemptor presents the seller [in front of the judge], and the object of sale is in his possession, then [the preemptor] may raise the dispute in the preemption against him. The judge does not listen to the evidence until the buyer attends. Thus, he revokes the sale [only] in his [the buyer’s] presence. He decides the preemption [case] against the seller and places the care of it with him.[537]

و إذا ترك الشفيع الإشهاد حين علم بالبيع وهو يقدر على ذلك بطلت شفعته، وكذلك إن أشهد في المجلس ولم يشهد على أحد المتعاقدين ولا عند العقار

When the preemptor, though able to summon witnesses, refrains from it at the time when he acquired knowledge of the sale, his [right of] preemption is void, as it is when he summons witnesses within the session but does not produce witnesses against either of the contracting parties nor [at] the real estate.[538]

و إن صالح من شفعته على عوض أخذه بطلت الشفعة، و يرد العوض

If he concedes his [right of] preemption for a consideration which he takes, his [right of] preemption is void, and he must return the consideration.[539]

و إذا مات الشفيع بطلت شفعته

When the preemptor dies, his [right of] preemption is void.[540]

و إذا مات المشتري لم تسقط الشفعة

When the buyer dies, the [right of] preemption does not lapse.[541]

و إن باع الشفيع ما يشفع به قبل أن يقضى له بالشفعة بطلت شفعته

When the preemptor sells whatever he is claiming in the preemption before the preemption is decided for him, his [right of] preemption is void.

ووكيل البائع إذا باع وهو الشفيع فلا شفعة له، وكذلك إن ضمن الشفيع الدرك عن البائع ، ووكيل المشتري إذا ابتاع وهو الشفيع فله الشفعة

If the agent of the seller sells [it] and he is [also] the preemptor, he has no [right of] preemption, as is the case if the preemptor takes responsibility of the commodity on behalf of the seller.[542] However, if the agent of the buyer purchases [the property] and he is [also] the preemptor, he may claim preemption.

ومن باع بشرط الخيار فلا شفعة للشفيع، فإن أسقط البائع الخيار وجبت الشفعة

Whoever sells, with a condition stipulated then the preemptor has no [right of] preemption, but if the seller drops the option [to withdraw], the preemption is an established right.[543]

و إن اشترى بشرط الخيار وجبت الشفعة

If someone buys stipulating an option [to withdraw], [then] the preemption is an established right.

ومن ابتاع دارا شراء فاسدا فلا شفعة فيها

Whoever purchases a house in an invalid purchase, there is no preemption in it.[544]

ولكل واحد من المتعاقدين الفسخ، فإن سقط الفسخ وجبت الشفعة

Either of the two parties to the contract may rescind [the sale]. If the [right of] rescission lapses, preemption may take place.

و إذا اشترى الذمي دارا بخمر أو خنزير وشفيعها ذمي أخذها بمثل الخمر وقيمة الخنزير، و إن كان شفيعها مسلما أخذها بقيمة الخمر والخنزير

When a *dhimmī* buys a house [in exchange] for wine or pigs, and its preemptor is [also] a *dhimmī*, he may take it for the same wine and the price of the pigs. If its preemptor is a Muslim, [then] he may take it for the price of the wine and [of] the pigs.

ولا شفعة في الهبة إلا أن تكون بعوض مشروطٍ

There is no [right of] preemption in gifts, unless they are [given] for a stipulated counter-value.[545]

و إذا اختلف الشفيع والمشتري في الثمن فالقول قول المشتري، فإن أقاما البينة فالبينة بينة الشفيع عند أبي حنيفة ومحمد رحمهما الله تعالى وقال أبو يوسف رحمه الله تعالى البينة بينة المشتري

When the preemptor and the buyer differ with regards to the price [of the real estate], then the [decisive] statement is the word of the purchaser, but if both of them produce evidence, then the [decisive] evidence is the evidence of the preemptor, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them. Abū Yūsuf, may Allah have mercy on him, however, said that the [decisive] evidence is the evidence of the purchaser.

وإذا ادعى المشتري ثمنا أكثر وادعى البائع أقل منه ولم يقبض الثمن أخذها الشفيع بما قال البائع، وكان ذلك حطا عن المشتري

When the buyer claims a price that is higher, and the seller claims less than that and has not [yet] taken the payment, the preemptor may take it [according] to what the seller stated, and that is a reduction [of price] from [the claim of] the buyer.

وإن كان قبض الثمن أخذها بما قال المشتري، ولم يُلتفت إلى قول البائع

If [the seller] has taken [the payment, then the preemptor] takes it [according] to what the buyer has stated, and the statement of the seller is not heeded.

وإذا حط البائع عن المشتري بعض الثمن يسقط ذلك عن الشفيع، وإن حط عنه جميع الثمن لم يسقط عن الشفيع

When the seller reduces some of the price for the buyer, it [also] drops for the preemptor,[546] but if he drops the price completely, it does not drop for the preemptor.[547]

وإذا زاد المشتري للبائع في الثمن لم تلزم الزيادة للشفيع

When the buyer increases the price for the seller, the excess is not binding on the preemptor.[548]

وإذا اجتمع الشفعاء فالشفعة بينهم على عدد رؤوسهم، ولا يعتبر باختلاف الأملاك

When many preemptors come together, then the preemption is [divided] between them according to the number of their heads [persons], and the

difference [in the amounts] of the ownerships is not taken into account.[549]

ومن اشترى دارا بعرض أخذها الشفيع بقيمته، وإن اشتراها بمكيل أو موزون أخذها بمثله

Whoever buys a house [in exchange] for a non-fungible commodity, the preemptor takes it [the house] for [the commodity's] value.[550] If he bought it [in exchange] for a measured or weighed [item], [the preemptor] takes it for the same.

وإن باع عقارا بعقار أخذ الشفيع كل واحد منهما بقيمة الآخر

If one sells real estate [in exchange] for real estate, the preemptor may take each one of the two for the value of the other.[551]

وإذا بلغ الشفيع أنها بيعت بألف فسلم الشفعة ثم علم أنها بيعت بأقل من ذلك أو بحنطة أو شعير قيمتها ألف أو أكثر فتسليمه باطل وله الشفعة

When it reaches the preemptor that it was sold for a thousand and so he relinquishes the [right of] preemption, and later comes to know that it was sold for less than that [amount], or [it was sold] for wheat or barley the price of which was a thousand or more, then his relinquishment is void and he [still] has [the right of] preemption.[552]

وإن بان أنها بيعت بدنانير قيمتها ألفٌ فلا شفعة له

If it becomes clear that it was sold for dinars the value of which is a thousand, then he has no [right of] preemption.[553]

وإذا قيل له إن المشتري فلانٌ فسلم الشفعة ثم علم أنه غيره فله الشفعة

If it is said to him that "the buyer is so-and-so" and he relinquishes [his right of] preemption, then later comes to know that [the buyer] is someone else, then he has [the right of] preemption.

ومن اشترى دارا لغيره فهو الخصم في الشفعة، إلا أن يسلمها إلى الموكل

Whoever buys a house for someone else, [then] he [himself] is the litigant in [the lawsuit of] preemption, unless he surrenders it to the client.

و إذا باع دارا إلا مقدار ذراع في طول الحد الذي يلي الشفيع فلا شفعة له، و إن ابتاع منها سهما بثمن ثم ابتاع بقيتها فالشفعة للجار في السهم الأول دون الثاني

When someone sells a house except for the measure of a cubit from the boundary which adjoins the preemptor, he has no [right of] preemption.[554] If he purchases a part of it for a [particular] price, and later purchases the rest of it, the neighbour's [right of] preemption is in the first part, [and] not [in] the second.[555]

و إذا ابتاعها بثمن ثم دفع إليه ثوبا عوضا عنه فالشفعة بالثمن دون الثوب

When one purchases it for [cash] payment then he pays him [in] cloth as consideration for it, then the preemption is for the [cash] payment, not for the cloth.

ولا تكره الحيلة في إسقاط الشفعة عند أبي يوسف رحمه الله تعالى، وقال محمد رحمه الله تعالى : تكره

[Adopting] a stratagem (*ḥīlah*) in [order to be] rid of the [right of] preemption is not disapproved, according to Abū Yūsuf, may Allah have mercy on him, but Muḥammad, may Allah have mercy on him, said that it is disapproved.

و إذا بنى المشتري أو غرس ثم قضى للشفيع بالشفعة فهو بالخيار: إن شاء أخذها بالثمن وقيمة البناء والغرس مقلوعين، و إن شاء كلف المشتريَ بقلعه

When the buyer has built or planted [the land], then later the preemption was decided in favour of the preemptor, he has the option:

1. If he wants, he may take it for the price and for the value of the building and the plants stripped away, or
2. If he wants, he tasks the buyer with its removal.[556]

وإن أخذها الشفيع فبنى أو غرس ثم استحقت رجع بالثمن ولا يرجع بقيمة البناء والغرس

When the preemptor takes [the land] and builds [upon it] or plants [in it], then later it becomes the right of someone else, [the preemptor] may demand the price [of the land], but he may not demand the value of the building and the planting.

وإذا انهدمت الدار أو احترق بناؤها أو جف شجر البستان بغير عمل أحدٍ، فالشفيع بالخيار: إن شاء أخذها بجميع الثمن، وإن شاء ترك

When the house collapses, or it burns down, or the trees of the orchard become dry without anyone's having done it, then the preemptor has a choice:

1. If he wants, he may take it for the total price, or
2. If he wants, he may leave [it].[557]

وإن نقض المشتري البناء قيل للشفيع: إن شئت فخذ العرصة بحصتها، وإن شئت فدع، وليس له أن يأخذ النقض

If the buyer tears down the building, it is said to the preemptor, "If you want, take the open ground[558] for its share [of the price], or if you want, then leave [it]," but he may not take the ruins.

ومن ابتاع أرضا وعلى نخلها ثمر أخذها الشفيع بثمرها وإن جده المشتري سقط عن الشفيع حصته

Whoever purchases some land and on its date-palms there is fruit, the preemptor may take it with [all] the fruit, but if the buyer has picked it, its portion [of the price] lapses for the preemptor.[559]

وإذا قضى للشفيع بالدار وإن لم يكن رآها فله خيار الرؤية، فإن وجد بها عيبا فله أن يردها به وإن كان المشتري شرط البراءة منه

When judgement has been given that the house belongs to the preemptor and if he had not seen it, he has the option of examination (*khiyār ar-ru'yah*),

and if he discovers a blemish in it, then he may return it because of [that blemish] even if the buyer had made a condition of not being responsible for it.[560]

و إذا ابتاع بثمن مؤجل فالشفيع بالخيار: إن شاء أخذها بثمن حال، و إن شاء صبر حتى ينقضي الأجل ثم يأخذها

If someone purchases with [the condition of] deferred payment, the preemptor has a choice:

1. If he wants, he may take it with immediate payment, or
2. If he wants, he may wait patiently until the deadline lapses, and then take it.

و إذا اقتسم الشركاء العقار فلا شفعة لجارهم بالقسمة

When many partners divide real estate [amongst themselves], there is no [right of] preemption for their neighbour because of the division.[561]

و إذا اشترى دارا فسلم الشفيع الشفعة ثم ردها المشتري بخيار رؤية أو بشرط أو بعيب بقضاء قاض فلا شفعة للشفيع و إن ردها بغير قضاء قاض أو تقايلا فللشفيع الشفعة

When someone buys a house, and the preemptor relinquishes his [right of] preemption, and then the buyer returns it due to the option of examining it, or due to a stipulated condition or due to a blemish, with the adjudication of a judge, the preemptor has no [right of] preemption.[562] If, however, he returns it without the decision of a judge, or they both (i.e. the buyer and the seller) agree to rescind the sale, then the preemptor has the right of preemption.

كتاب الشركة

SHARIKAH – PARTNERSHIP

الشركة على ضربين: شركة أملاك، وشركة عقود

Partnership (*sharikah*) is of two kinds:

1. Partnership in owned things, and
2. Contractual partnership.

Sharikat al-Amlāk – Partnership in Owned Things

فشركة الأملاك: العين يرثها رجلان أو يشتريانها فلا يجوز لأحدهما أن يتصرف في نصيب الآخر إلا بإذنه، وكل واحد منهما في نصيب صاحبه كالأجنبي

Partnership in owned things is [regarding] a [physical] item which two men inherit or which both of them buy, so it is not possible for either of them to dispose of the share of the other except with his permission. Each of the two is as if he were a stranger in the share of his partner.

Sharikat al-'Uqūd – Contractual Partnership

والضرب الثاني : شركة العقود، وهي على أربعة أوجه: مفاوضة، وعنان، وشركة الصنائع، وشركة الوجوه

The second type is the partnership of contracts [or contractual partnership], and it is of four kinds:

1. *Mufāwaḍah* (unlimited partnership),
2. *'Inān* (limited partnership),
3. *Ṣanā'i'* (partnership in manufacture), and
4. *Wujūh* (partnership in liabilities).

Sharikat al-Mufāwaḍah – Unlimited Partnership

فأما شركة المفاوضة فهي: أن يشترك الرجلان فيتساويان في ماالهما وتصرفهما ودينهما

With regards to unlimited partnership (*sharikat al-mufāwaḍah*), it is that two men are partners and they [agree that they] are equal in their wealth (*māl*), in their transacting [with it] and in their debt.[563]

فتجوز بين الحرين المسلمين البالغين العاقلين، ولا تجوز بين الحر والمملوك، ولا بين الصبي والبالغ، ولا بين المسلم والكافر

It is permitted between two free Muslims who are major and sane, but it is not permitted between a free person and a slave, nor between a minor and a major, nor between a Muslim and a non-Muslim.[564]

وتنعقد على الوكالة والكفالة

It is formed according to [the contract of] agency (*wakālah*) and [of] surety (*kafālah*).[565]

وما يشتريه كل واحد منهما يكون على الشركة إلا طعام أهله وكسوتهم

Whatever either of the two [partners] buys it is [due] from the partnership, except food for his family and their clothing.[566]

وما يلزم كل واحد منهما من الديون بدلا عما يصح فيه الاشتراك فالآخر ضامن له

Whatever debts are binding upon each of them in exchange for what the partnership is valid in, the other is liable for them.[567]

فإن ورث أحدهما مالا تصح فيه الشركة أو وهب له ووصل إلى يده بطلت المفاوضة وصارت الشركة عنانا

If either of the two inherits property in which the partnership is fit, or someone gives [property] as a gift to him and it reaches his possession, the [partnership of] *mufāwaḍah* is void[568] and the partnership becomes limited

[*‘inān* partnership].

ولا تنعقد الشركة إلا بالدراهم والدنانير والفلوس النافقة، ولا تجوز فيما سوى ذلك إلا أن يتعامل الناس بها كالتبر والنقرة فتصح الشركة بهما

Partnership is only concluded with dirhams, dinars and copper coins (*fulūs*)[569] that are in ready demand, and it is not permitted in anything other than that unless people deal in it, such as gold nuggets and silver; in which case partnership is valid in them.[570]

وإن أرادا الشركة بالعروض باع كل واحدٍ منهما نصف ماله بنصف مال الآخر ثم عقدا الشركة

When the two intend to form a partnership in goods, each one of the two is to sell his half of the property [in exchange] for half of the property of the other. Then they form the partnership.[571]

Sharikat al-‘Inān[572] – Limited Partnership

وأما شركة العنان فتنعقد على الوكالة دون الكفالة، ويصح التفاضل في المال، ويصح أن يتساويا في المال ويتفاضلا في الربح

With regards to limited partnership (*sharikat al-‘inān*), it is formed on the basis of agency but not standing surety,[573] and disparity of wealth is valid in it.[574] It is [also] valid if both of [the partners] are equal in wealth but they have disparity in profit.[575]

ويجوز أن يعقدها كل واحد منهما ببعض ماله دون بعض

It is permitted that either one of the two enters into the contract with a part of his wealth, leaving out a part.[576]

ولا تصح إلا بما بينا أن المفاوضة تصح به

It [*sharikat al-‘inān*] is not valid with other than with which we have explained that unlimited partnership (*mufāwaḍah*) is valid with.[577]

ويجوز أن يشتركا ومن جهة أحدهما دنانير ومن جهة الآخر دراهم

It is permitted if they are partners in such a way that from the side of one of them there are dinars, and from the other side there are dirhams.

وما اشتراه كل واحد منهما للشركة طولب بثمنه دون الآخر ويرجع على شريكه بحصته منه

Whatever either of the two buys for the partnership, its price is demanded [from him] and not from the other [partner],[578] and he recovers [the price] from his partner according to his share in it.[579]

و إذا هلك مال الشركة أو أحد المالين قبل أن يشتريا شيئا بطلت الشركة، و إن اشترى أحدهما بماله شيئا وهلك مال الآخر قبل الشراء فالمشترَى بينهما على ما شرطا، و يرجع على شريكه بحصته من ثمنه

When the property of the partnership, or one of the two properties, perishes before [the partners] buy anything, the partnership is void.[580] If either of the two buys something with his [share of] property, and the property of the other perishes before [his] purchase, then the purchased [commodity] is [shared] between them according to what they stipulated,[581] and the purchaser resorts to his partner for his share of its price.

وتجوز الشركة و إن لم يخلطا المال

Partnership [of *‘inān*] is permitted even though they do not mix the property.

ولا تصح الشركة إذا اشترط لأحدهما دراهم مسماة من الربح

If specified dirhams from the profit are stipulated for either of the two, then the partnership [of *‘inān*] is invalid.[582]

ولكل واحد من المفاوضين وشريكي العنان أن يبضع المال و يدفعه مضاربة، و يوكل من يتصرف فيه، و يرهن و يسترهن و يستأجر الأجنبيّ عليه، و يبيع بالنقد والنسيئة، و يده في المال يد أمانةٍ

Each one of the parties to the *mufāwaḍah* and the partners in *'inān* has [the right] to:

1. Make his property into merchandise (*biḍā'ah*),
2. Pay it as muḍārabah,[583]
3. Employ an agent who transacts with it,
4. Pledge or demand a pledge,
5. Hire a third party with it, and
6. Trade [it] for cash or credit.

His possession of the property is a possession of trust.

Sharikat aṣ-Ṣanā'i'[584] (Partnership in Manufacture)

وأما شركة الصنائع فالخياطان والصباغان يشتركان على أن يتقبلا الأعمال ويكون الكسب بينهما، فيجوز ذلك، وما يتقبله كل واحد منهما من العمل يلزمه ويلزم شريكه، فإن عمل أحدهما دون الآخر فالكسب بينهما نصفان

With regards to partnership in manufacture (*sharikat aṣ-ṣanā'i'*), it is permitted for two tailors or two dyers to be partners on the basis that both accept work and the income is [divided] between them both. Whatever work either one of the two accepts, it is binding on him and is [also] binding on his partner. If one of the two [partners] works but not the other, then the income is [divided] between them both, [in] two halves.[585]

Sharikat al-Wujūh – Partnership in Liabilities

وأما شركة الوجوه فالرجلان يشتركان ولا مال لهما على أن يشتريا بوجوههما ويبيعا، فتصح الشركة على هذا، وكل واحد منهما وكيل الآخر فيما يشتريه

With regards to *sharikat al-wujūh*, the partnership is valid when two men are partners and neither of them has property, on the basis that they buy in their own manner and they sell [in their own manner], and each of the two is an agent for the other in whatever he buys.

فإن شرطا أن المشترَى بينهما نصفان فالربح كذلك، ولا يجوز أن
يتفاضلا فيه، و إن شرطا أن المشترَى بينهما أثلاثا فالربح كذلك

If they stipulate the condition that the bought [commodity] is [equally shared] between both of them, then the profit is [also] like that. It is not permitted for them to differ in [the profit] thereof, and if they stipulate that the bought [item] is in thirds, then the profit is [also] like that. [586]

ولا تجوز الشركة في الاحتطاب والاحتشاش والاصطياد، وما
اصطاده كل واحد منهما أو احتطبه فهو له دون صاحبه

Partnership is not permitted in collecting firewood, gathering grass and hunting, and whatever either of the two hunts or gathers as firewood, that is for himself and not for his partner.

و إذا اشتركا ولأحدهما بغل وللآخر راوية يستقى عليها الماء
والكسب بينهما لم تصح الشركة، والكسب كله للذي استقى
الماء، وعليه أجر مثل الراوية إن كان العامل صاحب البغل، و إن
كان صاحب الراوية فعليه أجر مثل البغل

The partnership [of *wujūh*] is not valid if they are partners such that one of them has a mule and the other has a leathern bucket with which water may be drawn, and [they stipulate that] the income [is divided] between them both.[587] The income is absolutely for him who draws the water, and the customary (*mithl*) payment for the [use of the] leathern bucket is due from him, if the worker was the owner of the mule. If [the worker] was the owner of the leathern bucket, then the customary (*mithl*) payment for [the use of] the mule is due from him.[588]

Unsound Partnerships

وكل شركة فاسدة فالربح فيها على قدر رأس المال، ويبطل
شرط التفاضل

[With regards to] every unsound partnership, the profit in it is according to the amount of the capital, and making a condition of disparity is void.

وإذا مات أحد الشريكين أو ارتد ولحق بدار الحرب بطلت الشركة

The partnership is void when either of the parties dies,[589] or becomes an apostate and moves to enemy territory (*dār al-ḥarb).*[590]

وليس لواحد من الشريكين أن يؤدي زكاة مال الآخر إلا بإذنه، فإن أذن كل واحد منهما لصاحبه أن يؤدي زكاته فأدى كل واحد منهما فالثاني ضامن، سواء علم بأداء الأول أو لم يعلم عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى إن لم يعلم لم يضمن

None of the partners are to pay *zakāh* of the wealth of the other without his authority.[591] If each of the two does authorise his partner to pay his *zakāh* [for him], and each of them pays [it], then the other [partner] is [still] liable, [irrespective of] whether he knew of the payment [by the first] or did not know, according to Abū Ḥanīfah, may Allah have mercy on him,[592] but they,[593] may Allah have mercy on them, said that if he did not know, then he is not liable.

كتاب المضاربة

MUḌĀRABAH – PROFIT-SHARING PARTNERSHIP

المضاربة: عقد على الشركة في الربح بمال من أحد الشريكين وعمل من الآخر

Muḍārabah[594] is a contract for partnership in profit, with capital from one of the two partners and work from the other.

ولا تصح المضاربة إلا بالمال الذي بينا أن الشركة تصح به

Muḍārabah is only valid with the property which we have mentioned [earlier] that partnership is valid with.[595]

ومن شرطها أن يكون الربح بينهما مشاعا لا يستحق أحدهما منه دراهم مسماة

One of its preconditions is that the profit be [divided] between them on a common basis, and neither of the two is entitled to specified dirhams.[596]

ولا بد أن يكون المال مسلما إلى المضارب، ولا يد لرب المال فيه

The capital has to be handed over to the working partner (*muḍārib*) and the owner of the capital (*rabb al-māl*) has no control over it.

فإذا صحت المضاربة مطلقة جاز للمضارب أن يشتري ويبيع ويسافر ويبضع ويوكل، وليس له أن يدفع المال مضاربة إلا أن يأذن له رب المال في ذلك أو يقول له : إعمل برأيك

When the profit-sharing trade is established unconditionally, it is permitted for the working partner to buy, sell, travel, give as merchandise and appoint an agent. He may not give the capital as profit-sharing trade unless the owner of the capital authorises him [to do] that, or says to him, “Act according to your opinion.”

و إن خص له رب المال التصرف في بلد بعينه أو في سلعة بعينها لم يجز له أن يتجاوز عن ذلك، وكذلك إن وقت المضاربة مدة بعينها جاز وبطل العقد بمضيها

If the owner of the capital specifies that he should transact in a specific city, or in specific goods, [then] it is not permitted for him to transgress that, and likewise, if he fixes a specific duration for the profit-sharing trade, it is permitted, and the contract is void when it lapses.

وليس للمضارب أن يشتري أبا رب المال ولا ابنه ولا من يعتق عليه، فإن اشتراهم كان مشتريا لنفسه دون المضاربة

It is not [permitted] for the working partner to buy the owner of the capital's father, his son or someone who will become free from him.[597] If he buys them, he is a buyer on his own behalf, not for the [contract of] *muḍārabah.*[598]

و إن كان في المال ربح فليس له أن يشتري من يعتق عليه، و إن اشتراهم ضمن مال المضاربة، و إن لم يكن في المال ربح جاز له أن يشتريهم، فإن زادت قيمتهم عتق نصيبه منهم، ولم يضمن لرب المال شيئا، و يسعى المعتق لرب المال في قيمة نصيبه منه

[Even] if there is any profit in the capital, he should not buy someone who will become freed from him. If he does buy them, he is liable for the capital of the profit-sharing trade.[599] If, however, there is no profit in the capital, it is permitted for him to buy them. If their value increases, his share in them is free and he is not liable for anything to the owner of the capital,[600] and the freed [slave] works for the owner of the capital in return for his share with him.[601]

و إذا دفع المضارب المال مضاربة على غيره ولم يأذن له رب المال في ذلك لم يضمن بالدفع ولا بتصرف المضارب الثانى حتى يربح، فإذا ربح ضمن المضارب الأول المال لرب المال

When the working partner gives the capital [away] as profit-sharing trade to someone else, and the owner of the capital had not permitted him to do

that, he is not liable for giving it [away] nor for the transactions of the second working partner, until there is a profit.[602] When there is a profit, the first working partner is liable for the capital to the owner of the capital.

وإذا دفع إليه مضاربة بالنصف فأذن له أن يدفعها مضاربة فدفعها بالثلث جاز

When [the owner of the capital] gives it to [the working partner] for a half [of the profit], and he permits him to give it [away] as *muḍārabah,* and he does give it away for a third [of the profit], it is permitted.[603]

فإن كان رب المال قال له على أن ما رزق الله تعالى فهو بيننا نصفان فلرب المال نصف الربح، وللمضارب الثانى ثلث الربح، وللأول السدس

If the owner of the capital said to him, “Whatever Allah, exalted is He, bestows upon *us,* that is [divided] between us in two-halves,” then the owner of the capital has half of the profit, the second working partner has a third of the profit and the first working partner has a sixth [of the profit].[604]

وإن كان قال على أن ما رزقك الله فهو بيننا نصفان فللمضارب الثانى الثلث، وما بقي بين رب المال والمضارب الأول نصفان

If he said, “Whatever Allah bestows upon *you*, that is [divided] between us in two-halves,” then the second working partner (*muḍārib*) has a third[605] and whatever remains is [divided] between the owner of the capital and the first working partner (*muḍārib*) as two halves.

فإن قال على أن ما رزق الله فلى نصفه فدفع المال إلى آخر مضاربة بالنصف فللثانى نصف الربح ولرب المال النصف، ولا شيء للمضارب الأول

If he said, “Whatever Allah bestows, I have a half of it,” and he [the first working partner] gives the capital to someone else as *muḍārabah* for a half [of the profit], then the second has a half [of] the profit and the owner of the capital has [also] a half, and there is nothing for the first working partner.

فإن شرط للمضارب الثانى ثلثي الربح فلرب المال نصف الربح وللمضارب الثانى نصف الربح، و يضمن المضارب الأول للمضارب الثانى مقدار سدس الربح من ماله

If he[606] stipulates two-thirds of the profit for the second working partner (*muḍārib*), then the owner of the capital has a half of the profit and the second working partner [also] has a half of the profit. The first working partner is liable to the second working partner for the amount of a sixth of the profit from his [own] property.

و إذا مات رب المال أو المضارب بطلت المضاربة

If the owner of the capital or the working partner die, the *muḍārabah* is void.[607]

و إذا ارتد رب المال عن الإسلام ولحق بدار الحرب بطلت المضاربة

If the owner of the capital reneges [on Islam] and migrates to enemy territory, the *muḍārabah* is void.

و إن عزل رب المال المضارب ولم يعلم بعزله حتى اشترى أو باع فتصرفه جائز، و إن علم بعزله والمال عروض في يده فله أن يبيعها ولا يمنعه العزل من ذلك، ثم لا يجوز أن يشتري بثمنها شيئا آخر

If the owner of the capital deposes the working partner (*muḍārib*) and [the latter] has no knowledge [of that] so-much-so [that] he [continues to] buy and sell, then his transacting [with the capital] is valid.[608] If, however, he knew of his [own] deposition and the capital was [in the shape of] goods in his possession, then he may sell them and the deposition does not hinder him from [doing] that, but then it is not permitted for him to buy anything else with its payment.

و إن عزله ورأس المال دراهم أو دنانير قد نضت فليس له أن يتصرف فيها

If [the owner of the capital] removes him, and the capital is dirhams or dinars in cash, then he may not transact with it.

و إذا افترقا وفي المال ديون وقد ربح المضارب فيه أجبره الحاكم على اقتضاء الديون، و إن لم يكن في المال ربح لم يلزمه الاقتضاء، ويقال له: وكل رب المال في الاقتضاء

If both of them separate[609] and there are debts due from the capital and the working partner has profited from it, the judge (*ḥākim*) should compel him to settle the debts. If there is no profit on the capital, the settlement [of the debts] is not binding upon him, and it is said to him, "Make the owner of the capital the agent for the settlement [of the debts]."

وما هلك من مال المضاربة فهو من الربح دون رأس المال، فإن زاد الهالك على الربح فلا ضمان على المضارب فيه

Whatever of the profit-sharing trade's capital perishes, it is [deemed to be] from the profit not from the capital, and if the perished [capital] exceeds the [amount of] profit, then there is no liability on the working partner regarding that.[610]

و إن كانا يقتسمان الربح والمضاربة على حالها ثم هلك المال كله أو بعضه ترادا الربح حتى يستوفي رب المال رأس المال، فإن فضل شيء كان بينهما، و إن نقص من رأس المال لم يضمن المضارب

If both of them had divided the profit, and the *muḍārabah* was in its [original] state, then the whole of the capital or [even] a part of it perished, they return the profit until the owner of the capital receives the capital. Then, if there is any surplus, it is [divided] between the two, but, if it is less than the capital, the working partner is not liable [for anything].

و إن كانا اقتسما الربح وفسخا المضاربة ثم عقداها فهلك المال أو بعضه لم يترادا الربح الأول

If they had divided the profit and [then] revoked the profit-sharing trade, then formed it again and the capital, or a part of it, perishes, they do not return the first profit [that of the first contract of profit-sharing trade].[611]

ويجوز للمضارب أن يبيع بالنقد والنسيئة

It is permitted for the working partner to sell for cash or for credit.

ولا يزوج عبدا ولا أمة من مال المضاربة

He[612] cannot marry off a slave or a slave-woman from the profit-sharing trade’s property.

كتاب الوكالة

WAKĀLAH – AGENCY

كل عقد جاز أن يعقده الإنسان بنفسه جاز أن يوكل به غيره

Every contract, the forming of which is permitted for a human himself, it is [also] permitted for him to appoint someone else as an agent in it.[613]

ويجوز التوكيل بالخصومة في سائر الحقوق، وإثباتها، ويجوز بالاستيفاء إلا في الحدود والقصاص فإن الوكالة لا تصح باستيفائها مع غيبة الموكل عن المجلس

It is permitted to appoint (*tawkīl*) an agent to dispute in all rights and to secure them. It is permitted for securing the fulfilment [of all rights] except in [cases of] punishments for contraventions of the limits (*ḥudūd*) and retaliatory punishments (*qiṣāṣ*), for agency is not fit for securing their fulfilment with the absence of the principal (*muwakkil*) from the session (*majlis).*[614]

وقال أبو حنيفة رحمه الله تعالى: لا يجوز التوكيل بالخصومة إلا برضا الخصم، إلا أن يكون الموكل مريضا أو غائبا مسيرة ثلاثة أيام فصاعدا، وقال أبو يوسف ومحمد رحمهما الله تعالى: يجوز التوكيل بغير رضا الخصم

Abū Ḥanīfah, may Allah have mercy on him, said that appointing an agent is not permitted for a dispute but with the consent of the litigant, unless the principal is ill or absent for a travelling distance of three days or more, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that the appointment of an agent is permitted without the consent of the litigant.

ومن شرط الوكالة: أن يكون الموكل ممن يملك التصرف وتلزمه الأحكام والوكيل ممن يعقل البيع ويقصده

Of the conditions of [the contract of] agency are that:

1. The principal be one of those who owns disposal [of his right][615] and who is bound by the rulings,[616] and
2. The agent be [one] of those who understands sale and intends it. [617,618]

و إذا وكل الحر البالغ أو المأذون مثلهما جاز

It is permitted for a free and major [person] or an authorised [slave] to appoint an agent, the like of themselves.

و إن وكلا صبيا محجورا يعقل البيع والشراء أو عبدا محجورا جاز، ولا تتعلق بهما الحقوق وتتعلق بموكليهما

If they [a free and major [person] or an authorised [slave]] appoint a legally incompetent minor, who [nevertheless] understands buying and selling, or a legally incompetent slave, then [that] is permitted,[619] and the rights are not relevant to them, but they are relevant to their principals.[620]

والعقود التي يعقدها الوكلاء على ضربين: كل عقد يضيفه الوكيل إلى نفسه – مثل البيع و الشراء والإجارة – فحقوق ذلك العقد تتعلق بالوكيل دون الموكل، فيسلم المبيع، ويقبض الثمن، ويطالب بالثمن، إذا اشترى، ويقبض المبيع، ويخاصم في العيب، وكل عقد يضيفه الوكيل إلى موكله – كالنكاح والخلع والصلح عن دم العمد – فإن حقوقه تتعلق بالموكل دون الوكيل، فلا يطالب وكيل الزوج بالمهر، ولا يلزم وكيل المرأة تسليمها

Contracts that are entered into by agents are of two types:

1. Every contract which the agent attributes to himself, like selling, buying and leasing. The rights in that contract attach to the agent and not to the principal. [The agent] hands over the goods and takes possession of the payment. The payment is demanded from him whenever he buys and he takes possession of the goods. He is challenged in the case of a blemish [in the goods];
2. Every contract which the agent attributes to his principal, like the marriage contract (*nikāḥ*), divorce at the request of the wife (*khul'*) and conciliation for intentional manslaughter, for its rights attach to

the principal and not the agent. The agent of the husband does not demand the dowry (*mahr*) and the agent of the wife is not bound to submit her [to the husband].

وإذا طالب الموكل المشتري بالثمن فله أن يمنعه إياه، فإن دفعه إليه جاز ولم يكن للوكيل أن يطالبه ثانيا

When the principal demands payment from the buyer, he may refuse him, but if he pays it to him, it is permitted, and the agent [of the seller] may not demand it from him a second time.

ومن وكل رجلا بشراء شيء فلا بد من تسمية جنسه وصفته ومبلغ ثمنه، إلا أن يوكله وكالة عامة فيقول: ابتع لي ما رأيت

Whoever appoints a man to purchase something, it is essential that he specifies its kind, its description and the amount of its price, unless he appoints him according to a general [contract of] agency, and so says, "Purchase whatever you wish for me."

وإذا اشترى الوكيل وقبض المبيع ثم اطلع على عيب فله أن يرده بالعيب ما دام المبيع في يده، فإن سلمه إلى الموكل لم يرده إلا بإذنه

When the agent buys and takes possession of the goods, then becomes aware of a blemish, he may return them because of that blemish as long as the goods are [still] in his possession. However, if he has handed them over to the principal, he may not return them [to the seller] except with the permission [of the principal].

ويجوز التوكيل بعقد الصرف والسلم، فإن فارق الوكيل صاحبه قبل القبض بطل العقد، ولا تعتبر مفارقة الموكل

It is permitted to appoint an agent for *ṣarf* (currency transactions) and *salam* (advance payment) contracts. If the agent separates from his dealing partner prior to taking possession, the contract is void, but the separation of the principal is not taken into account.

وإذا دفع الوكيل بالشراء الثمن من ماله وقبض المبيع فله أن

يرجع به على الموكل، فإن هلك المبيع في يده قبل حبسه هلك من مال الموكل ولم يسقط الثمن، وله أن يحبسه حتى يستوفي الثمن

If the agent for purchase gives the payment from his own property and takes possession of the goods, he may recover it from the principal. If the goods perish in his possession before he has secured them, then they perish as the property of the principal and the payment does not lapse.[621] [The agent] may detain [the commodity] until he receives the payment.

فإن حبسه فهلك في يده كان مضمونا ضمان الرهن عند أبي يوسف رحمه الله تعالى وضمان المبيع عند محمد رحمه الله تعالى

If he secures it and it perishes in his possession, he is liable [as he would have] liability for a pledge,[622] according to Abū Yūsuf, may Allah have mercy on him, and [as he would have] liability for sold golds,[623] according to Muḥammad, may Allah have mercy on him.

و إذا وكل رجل رجلين فليس لأحدهما أن يتصرف فيما وكلا فيه دون الآخر، إلا أن يوكلهما بالخصومة أو بطلاق زوجته بغير عوض أو يعتق عبده بغير عوض أو برد وديعة عنده أو بقضاء دين عليه

When a man appoints two men as agents, then neither of the two may transact in that [matter for] which they have been appointed without the [presence of the] other, unless he appoints them:

1. [To represent him in] a dispute,
2. To divorce his wife without consideration,
3. To set his slave free without consideration,
4. To return a deposit that is with him, or
5. To discharge a debt that he owes.

وليس للوكيل أن يوكل فيما وكل به، إلا أن يأذن له الموكل أو يقول له: اعمل برأيك

The agent may not appoint an [other] agent [for] that which he [himself] has been appointed an agent for, unless the principal authorises him or says to him, “Do as you wish.”

فإن وكل بغير إذن موكله فعقد وكيله بحضرته جاز، و إن عقد
بغير حضرته فأجازه الوكيل الأول جاز

If he appoints an agent without the authorisation of his principal, and the [second] agent makes a contract in his presence, it is valid, and if he makes a contract in his absence and the first agent permits him [to do that], it is valid.

وللموكل أن يعزل الوكيل عن الوكالة، فإن لم يبلغه العزل فهو
على وكالته وتصرفه جائز حتى يعلم

The principal may depose the agent from the agency.[624] If [the notice of] the deposal does not reach [the agent], then he is [still] an agent, and his transactions are valid until he comes to know [of his deposition].

That which Invalidates Agency

وتبطل الوكالة بموت الموكل، وجنونه جنونا مطبقا، ولحاقه بدار
الحرب مرتدا

The agency is void upon the death of the principal, by his complete insanity and by his moving to enemy territory as an apostate.[625]

و إذا وكل المكاتب ثم عجز أو المأذون له فحجر عليه أو الشريكان
فافترقا، فهذه الوجوه كلها تبطل الوكالة علم الوكيل أو لم يعلم

1. When a *mukātab* slave appoints an agent, and then he or the person authorised by him becomes incapable,[626] then he is declared legally incompetent, or
2. Two partners who then separate.

These are all instances that nullify the [contract of] agency, [irrespective of] whether the agent knows or does not know.

و إذا مات الوكيل أو جن جنونا مطبقا بطلت وكالته، و إن لحق
بدار الحرب مرتدا لم يجز له التصرف إلا أن يعود مسلما

When the agent dies, or suffers complete insanity, his agency is void. If he moves to enemy territory as an apostate, transacting is not permitted for him unless he returns as a Muslim.[627]

ومن وكل رجلا بشيء ثم تصرف الموكل بنفسه فيما وكل به بطلت الوكالة

Whoever appoints a man [as an agent] for something, then the principal himself transacts with that which he appointed [the agent], the agency is void.[628]

والوكيل بالبيع والشراء لا يجوز له أن يعقد عند أبي حنيفة رحمه الله تعالى مع أبيه وجده وولده وولد ولده وزوجته وعبده ومكاتبه، وقال أبو يوسف ومحمد رحمهما الله تعالى: يجوز بيعه منهم بمثل القيمة إلا في عبده ومكاتبه

[With regards to] the agent for selling and buying, according to Abū Ḥanīfah, may Allah have mercy on him, it is not permitted for him to enter into a contract, with his [own] father,[629] his grandfather, his son, his grandson, his wife, his slave and his *mukātab* slave.[630] Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that his selling to them according to the customary price (*mithl al-qīmah*) is permitted, except in [the case of] his slave and his *mukātab* slave.

والوكيل بالبيع يجوز بيعه بالقليل والكثير عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: لا يجوز بيعه بنقصان لا يتغابن الناس في مثله

[With regards to] the sales agent, his selling is permitted in small or large [quantity], according to [Imam] Abū Ḥanīfah, may Allah have mercy on him, but they,[631] may Allah have mercy on them, said that his selling is not permitted in [such a] diminished [quantity] to which the people are not accustomed.[632]

والوكيل بالشراء يجوز عقده بمثل القيمة وزيادة يتغابن الناس في مثلها

[With regards to] the purchasing agent, his contract is valid according to the customary value and [up] to any excess to which people are accustomed.

ولا يجوز بما لا يتغابن الناس في مثله، والذي لا يتغابن الناس فيه، ما لا يدخل تحت تقويم المقومين

That to which the people are not accustomed is not allowed, and whatever the people are not accustomed to is that which does not come under the valuation of the valuers.[633]

و إذا ضمن الوكيل بالبيع الثمن عن المبتاع فضمانه باطلٌ

If the sales agent guarantees the payment on behalf of the purchaser, his guarantee is void.

و إذا وكله ببيع عبده فباع نصفه جاز عند أبي حنيفة رحمه الله تعالى، و إن وكله بشراء عبد واشترى نصفه فالشراء موقوفٌ، فإن اشترى باقيه لزم الموكل

When someone appoints an agent to sell his slave and he sells a half of him, it is permitted according to Abū Ḥanīfah, may Allah have mercy on him. If he appoints him as an agent to buy a slave and he buys a half of him, the purchase is suspended, and if he buys the rest of him, it is binding on the principal.

و إذا وكله بشراء عشرة أرطال لحم بدرهم فاشترى عشرين رطلا بدرهم من لحم يباع مثله عشرة أرطال بدرهم لزم الموكل منه عشرة بنصف درهم عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يلزمه العشرون

If he appoints him as an agent to buy ten *riṭls* of meat for [the price of] one dirham, and he buys twenty *riṭls* of meat for one dirham the like of which is sold as ten *riṭls* for one dirham, then [only] ten *riṭls* [of meat] for half a dirham is binding on the principal, according to Abū Ḥanīfah, may Allah have mercy on him. They,[634] may Allah have mercy on them, however, said that twenty [*riṭls* is binding on him].

و إن وكله بشراء شيء بعينه فليس له أن يشتريه لنفسه

If he appoints him as an agent to buy something specific, he [the agent]

should not buy it for himself.

و إن وكله بشراء عبد بغير عينه فاشترى عبدا فهو للوكيل، إلا أن يقول: نويت الشراء للموكل، أو يشتريه بمال الموكل

If he appoints him [an agent] to buy a slave without specification, and he [subsequently] does buy a slave, he is for the agent, unless he says, “I intended to buy [him] for the principal,” or if he buys him from the property of the principal.

والوكيل بالخصومة وكيلٌ بالقبض عند أبي حنيفة وأبي يوسف ومحمد رحمهم الله تعالى، والوكيل بقبض الدين وكيلٌ بالخصومة فيه عند أبي حنيفة رحمه الله تعالى

The agent for a dispute [settlement] is [virtually] an agent to take possession, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, and the agent for taking possession of [repayment of] a debt is an agent for [the settlement of a] dispute, according to Abū Ḥanīfah, may Allah have mercy on him.

و إذا أقر الوكيل بالخصومة على موكله عند القاضي جاز إقراره، ولا يجوز إقراره عليه عند غير القاضي عند أبي حنيفة ومحمد رحمهما الله تعالى إلا أنه يخرج من الخصومة، وقال أبو يوسف رحمه الله تعالى: يجوز إقراره عليه عند غير القاضي

When the agent in a dispute confesses against his principal in the presence of the judge, his confession is allowed, but his confession is not allowed against [his principal] in the presence of someone other than the judge, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, but that he should leave the dispute. Abū Yūsuf, may Allah have mercy on him, however, said, “His confession against [the principal] in the presence of someone other than the judge is permitted.”

ومن ادعى أنه وكيل الغائب في قبض دينه فصدقه الغريم أمر بتسليم الدين إليه، فإن حضر الغائب فصدقه جاز و إلا دفع إليه الغريم الدين ثانيا و يرجع به على الوكيل إن كان باقيا في يده

Whoever claims to be the agent of someone who is absent in the affair of collecting his credit and the debtor affirms that, [the debtor] is ordered to submit the debt to him. If the absentee [principal] arrives and acknowledges [the agent as his bailiff],[635] it is permitted. Otherwise the debtor pays him a second time and recovers it from the agent if it is still in his [the agent's] possession.[636]

وإن قال «إني وكيلٌ بقبض الوديعة» فصدقه المودع لم يؤمر بالتسليم إليه

If he says, "I am the agent for the recovery of the deposit," and the depositary verifies it, he is not ordered to hand it over to him.

كتاب الكفالة

KAFĀLAH – SURETY

الكفالة ضربان: كفالة بالنفس وكفالة بالمال

Surety (*kafālah*) is of two types:

1. Surety of person (*nafs*), and
2. Surety of property (*māl*).[637]

Surety of Person

فالكفالة بالنفس جائزة، وعلى المضمون بها إحضار المكفول به، وتنعقد إذا قال «تكفلت بنفس فلان، أو برقبته، أو بروحه، أو بجسده، أو برأسه، أو بنصفه، أو بثلثه»

[The contract of] standing surety for a person is permitted, and the person who stands surety for him must present the principal (*makfūl bihī).*

It is concluded when one says:

1. "I am surety for the life of so-and-so,"
2. "…for his neck,"[638]
3. "…for his soul,"
4. "…for his body,"
5. "…for his head,"
6. "…for a half of him,"
7. "…for a third of him."

وكذلك إن قال «ضمنته، أو هو علي، أو إلي، أو أنا به زعيمٌ، أو قبيلٌ به»

Likewise, if one says:

1. "I give guarantee for him,"
2. "He is [a liability] upon me," or "… to me,"

3. “I am responsible for him,” or “… surety for him.”

فإن شرط في الكفالة تسليم المكفول به في وقت بعينه لزمه إحضاره إذا طالبه به في ذلك الوقت، فإن أحضره وإلا حبسه الحاكم

If a condition is stipulated in the [contract of] surety to surrender the principal at a specific time, it is binding upon [the one standing surety] to present him when the one to whom the surety was given (*makfūl lahū*) demands him from him at that time. If [the one standing surety] presents him [then it is good], but otherwise the judge (*ḥākim*) detains [the one standing surety].[639]

وإذا أحضره وسلمه في مكان يقدر المكفول له على محاكمته برئ الكفيل من الكفالة

If [the one standing surety] presents him [to the one to whom the surety was given] and surrenders him in a place where the one to whom the surety was given can present his case legally against [the principal], the one standing surety is free from [the bonds of the contract of] surety.[640]

وإذا تكفل على أن يسلمه في مجلس القاضي فسلمه في السوق برئ، وإن كان في بريةٍ لم يبرأ

When he stands surety to surrender [the principal] in the assembly of the judge but he surrenders him in the marketplace, he is [still] free [of the obligations of the contract of surety], but if he submits him in the wild, he is not free [of those obligations].[641]

وإذا مات المكفول به برئ الكفيل بالنفس من الكفالة

If the principal dies, the one standing surety of person is free from the [contract of] surety.

وإن تكفل بنفسه على أنه إن لم يواف به في وقت كذا فهو ضامن لما عليه وهو ألف ولم يحضره في الوقت لزمه ضمان المال ولم يبرأ من الكفالة بالنفس

If he himself undertakes the surety [on the condition] that if he does not present him at such a time then he [himself] is liable for whatever is due upon [the principal], and that is one thousand [dirhams], and he does not present him at [that] time, the liability for the property [of one thousand dirhams] is binding upon him, but he is not clear of the [contract of] surety of person.[642]

ولا تجوز الكفالة بالنفس في الحدود والقصاص عند أبي حنيفة رحمه الله تعالى

Standing surety of person is not permitted in punishments for contraventions of the limits (*ḥudūd*) and retaliatory punishments (*qiṣāṣ*), according to Abū Ḥanīfah, may Allah have mercy on him.[643]

Surety of Property

وأما الكفالة بالمال فجائزة معلوما كان المكفول به أو مجهولا إذا كان دينا صحيحا، مثل أن يقول: تكفلت عنه بألف درهم، أو بما لك عليه، أو بما يدركك في هذا البيع

[With] regards to [the contract of] standing surety for property, it is permitted when the debt is valid, whether the principal is known or unknown. For example, someone says:

1. "I am surety for him with regards to one thousand dirhams," or
2. "…with regards to whatever he owes you," or
3. "…whatever comes to you in this transaction."

والمكفول له بالخيار: إن شاء طالب الذي عليه الأصل، و إن شاء طالب الكفيل

The one to whom the surety was given (*makfūl lahū*) has the option:

1. If he wants, he may demand from the one who owes the original [debt],[644] or
2. If he wants, he may demand from the one who was surety.

ويجوز تعليق الكفالة بالشروط مثل أن يقول: ما بايعت فلانا فعلي، أو ما ذاب لك عليه فعلي، أو ما غصبك فلان فعلي

It is permitted to tie the [contract of] surety with conditions. For example, someone says:

1. "Whatever you sell to so-and-so, [its payment] is [due] from me,"
2. "Whatever is due from him to you is due from me," or
3. "Whatever so-and-so expropriated from you is [due] from me."

وإذا قال: تكفلت بما لك عليه، فقامت البينة بألفٍ عليه ضمنه الكفيل، وإن لم تقم البينة فالقول قول الكفيل مع يمينه في مقدار ما يعترف به، فإن اعترف المكفول عنه بأكثر من ذلك لم يصدق على كفيله

When someone says, "I am surety for whatever he owes you," [and] then evidence is established that [the principal, or debtor] owes one thousand [dirhams], the one who is surety is liable for it. If, however, evidence is not established, then the [decisive] statement is the saying of the person who is surety along with his oath about the amount he acknowledges, and if the person for whom he is surety acknowledges more than that [amount], he is not believed against the one who is surety for him.[645]

وتجوز الكفالة بأمر المكفول عنه وبغير أمره، فإن كفل بأمره رجع بما يؤدى عليه، وإن كفل بغير أمره لم يرجع بما يؤدي وليس للكفيل أن يطالب المكفول عنه بالمال قبل أن يؤدي عنه، فإن لوزم بالمال كان له أن يلازم المكفول عنه حتى يخلصه، وإذا أبرأ الطالب المكفول عنه أو استوفى منه برئ الكفيل، وإن أبرأ الكفيل لم يبرأ المكفول عنه، ولا يجوز تعليق البراءة من الكفالة بشرطٍ

Being surety is permitted by the order and [also] without the order of the person on whose behalf someone is surety (*makfūl ʻanhu);* if someone is surety by his order, then he claims [from him] whatever he paid on his behalf, but if he is surety without his order, then he does not claim for what he paid on his behalf.

Someone being surety may not demand property from the person on whose behalf someone is surety (*makfūl ʻanhu*) before he pays it on his behalf, but if [the person who is surety] is obliged [to give] the property,

[then] he may compel the person on whose behalf he is surety (*makfūl ʻanhu*) [to pay] until he clears it. If the person seeking [the sum][646] absolves the person on whose behalf someone has been surety, or he receives [the property] from him, the person who is surety is [also] free. Attaching a condition to absolving someone from the [contract of] surety is not allowed.[647]

وكل حق لا يمكن استيفاؤه من الكفيل لا تصح الكفالة به كالحدود والقصاص

Every right, the fulfilment of which is not possible by the person who is surety, the [contract of] surety is not valid for it, such as [in the cases of] punishments for contraventions of the limits (*ḥudūd*) and retaliatory punishments (*qiṣāṣ).*

وإذا تكفل عن المشتري بالثمن جاز، وإن تكفل عن البائع بالمبيع لم تصح

It is permitted for someone to be surety for payment on behalf of a buyer,[648] but if he is surety for the object of sale on behalf of a seller, it is not valid.[649]

ومن استأجر دابة للحمل فإن كانت بعينها لم تصح الكفالة بالحمل، وإن كانت بغير عينها جازت الكفالة

Whoever hires an animal for carrying, if it is a specific [animal], the [contract of] surety is not valid for the load, but if it is not specific, [then] the [contract of] surety is permitted.

ولا تصح الكفالة إلا بقبول المكفول له في مجلس العقد، إلا في مسألة واحدة، وهي أن يقول المريض لوارثه: تكفل عني بما علي من الدين فتكفل به مع غيبة الغرماء

[The contract of] surety is only valid with the acceptance of the person to whom the surety was given (*makfūl lahū*) within the session of the contract, except in one case, and that is when an ill person says to his heir, "Stand surety on my behalf for whatever debt is due upon me," so that he stands

surety for him in the absence of the creditors.

و إذا كان الدين على اثنين و كل واحدٍ منهما كفيل ضامن عن الآخر فما أدى أحدهما لم يرجع به على شريكه حتى يزيد ما يؤديه على النصف فيرجع بالزيادة

If [repayment of] the debt is due from two people and each of the two stands surety [and is] liable for the other, then whatever either of them pays, he does not recover it from his partner unless that what he gives is more than half,[650] [in which case] he may then recover the excess.

و إذا تكفل اثنان عن رجل بألفٍ على أن كل واحد منهما كفيل عن صاحبه فما أدى أحدهما يرجع بنصفه على شريكه، قليلا كان أو كثيرا

When two persons are surety on behalf of one [and the same] person for a thousand [dirhams] such that each of the two stands surety for his partner, then whatever either of them gives, he recovers it from his partner, whether it is a little or a lot.

ولا تجوز الكفالة بمال الكتابة سواء حر تكفل به أو عبد

[The contract of] surety is not permitted for the property of the contract in which a slave agrees to purchase his own freedom (*kitābah*), irrespective of whether a free man stands surety for [the slave who has contracted to purchase his freedom (*mukātab)*] or a slave.

و إذا مات الرجل وعليه ديون ولم يترك شيئا فتكفل رجل عنه للغرماء لم تصح الكفالة عند أبي حنيفة رحمه الله تعالى، وعندهما رحمهما الله تعالى تصح

When a man dies owing debts, and he has not left anything, and a man stands surety to the creditors [for him], the [contract of] surety is not valid, according to Abū Ḥanīfah, may Allah have mercy on him, but according to Abū Yūsuf and Muḥammad, may Allah have mercy on them, it is valid.

كتاب الحوالة

ḤAWĀLAH – TRANSFER OF DEBT

الحوالة جائزة بالديون، وتصح برضا المحيل والمحتال والمحتال عليه

Transfer (*ḥawālah*) of debts is permitted. It is valid with the consent of:

1. The primary debtor who is transferring the debt (*muḥīl),*
2. The creditor (*muḥṭāl),* and
3. The person to whom responsibility for the debt is transferred (*muḥṭāl ‘alayhi).*[651]

وإذا تمت الحوالة برئ المحيل من الديون، ولم يرجع المحتال له على المحيل إلا أن يتوى حقه

When the transfer of debt is complete, the primary debtor who is transferring the debt becomes free of the debts,[652] and the creditor may not recover it from the primary debtor who is transferring the debt, unless his right is infringed.

والتوى عند أبي حنيفة رحمه الله تعالى بأحد الأمرين: إما أن يجحد الحوالة ويحلف ولا بينة عليه، أو يموت مفلسا

According to Abū Ḥanīfah, may Allah have mercy on him, infringement [of a right] is by either of two ways:

1. Either [the person to whom responsibility for the debt is transferred] denies [the existence of] the [contract of] transfer of debt and takes an oath [upon it], and the creditor has no evidence against [the person to whom responsibility for the debt is transferred], or
2. [The person to whom responsibility for the debt is transferred] dies insolvent.

وقال أبو يوسف ومحمد رحمهما الله تعالى: هذان الوجهان و وجه ثالث، وهو أن يحكم الحاكم بإفلاسه في حال حياته

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that these are two views, and there is a third view and that is that the judge (*ḥākim*) declares [the person to whom responsibility for the debt is transferred] insolvent during his lifetime.

و إذا طالب المحتال عليه المحيل بمثل مال الحوالة فقال المحيل «أحلت بدين لي عليك» لم يقبل قوله، وكان عليه مثل الدين

When the person to whom responsibility for the debt is transferred demands from the primary debtor who is transferring the debt the same amount as the property of the transferal of debt, and the primary debtor who is transferring the debt says, "I have transferred the debt I owe you," his statement is not accepted and he owes the equal [amount] of the debt.

و إن طالب المحيل المحتال بما أحاله به فقال: إنما أحلتك لتقبضه لي، وقال المحتال: لا بل أحلتني بدين لي عليك، فالقول قول المحيل مع يمينه

If the primary debtor who is transferring the debt demands from the creditor that for which [the person to whom responsibility for the debt is transferred] accepts the transfer and says, "I made the transfer so that you may take [the debt] for me," and the creditor says, "No, but you made me the transfer of the debt [in exchange] for a debt which I owe you," the [decisive] statement is the saying of the primary debtor who is transferring the debt along with his oath.

و يكره السفاتج، وهو: قرض استفاد به المقرض أمن خطر الطريق

Bills of exchange (*safātij*) are disapproved; and that is a loan by which the person who lends benefits by safety from the perils of the way.[653]

كتاب الصلح

ṢULḤ – NEGOTIATED SETTLEMENT

الصلح على ثلاثة أضرب: صلح مع إقرار، وصلح مع سكوت وهو
أن لا يقر المدعى عليه ولا ينكر، وصلح مع إنكار، وكل ذلك جائز

Negotiated settlement (*ṣulḥ*)[654] is of three types:

1. Negotiated settlement with acknowledgement,
2. Negotiated settlement with silence – that is when the one against whom the claim is made (*mudda'ā 'alayhi*) does not confirm but neither does he deny, and
3. Negotiated settlement with denial.

All of that is valid.

فإن وقع الصلح عن إقرار اعتبر فيه ما يعتبر في البياعات إن وقع
عن مال بمال، و إن وقع عن مال بمنافع فيعتبر بالإجارات

If negotiated settlement occurs from an acknowledgement, then that which is taken into account in commercial goods[655] is taken account of in it, if it takes place in the exchange of property for property. If, however, it occurs in the exchange of property for benefits, then it is taken into account as [that] in leases.[656]

والصلح عن السكوت والإنكار في حق المدعى عليه لافتداء
اليمين وقطع الخصومة، وفي حق المدعي لمعنى المعاوضة

Negotiated settlement arising from silence and denial on the part of the defendant is for the expiation of an oath and to discontinue a dispute, and with respect to the plaintiff it is in the sense of compensation.

و إذا صالح عن دار لم تجب فيها الشفعة، و إذا صالح على دار
وجبت فيها الشفعة

When one makes a settlement concerning a house there is no right of preemption in that, but if he makes a settlement against a house [then] there is a right of preemption in that.

وإذا كان الصلح عن إقرار فاستحق بعض المصالح عنه رجع
المدعى عليه بحصة ذلك من العوض

When the settlement arises from an acknowledgement and entails some benefits, the defendant recovers that share from the compensation.

وإن وقع الصلح عن سكوت أو إنكار فاستحق المتنازع فيه
رجع المدعي بالخصومة ورد العوض

When the settlement arises from silence or denial, then a disputant merits it, the claimant returns to litigation [with the new claimant] and returns the [full] consideration [to him].[657]

وإن استحق بعض ذلك رد حصته ورجع بالخصومة فيه

If someone is entitled to a part of that [disputed item], he returns his share and returns to litigation over it.

وإن ادعى حقا في دار لم يبينه فصولح من ذلك على شيء ثم
استحق بعض الدار لم يرد شيئا من العوض

If someone claims a right in a house and does not make that [right] clear,[658] then settlement is made [with him] for something, and later [it appears that] he is entitled to a part of the house, [the defendant] does not return any of the consideration.[659]

والصلح جائز من دعوى الأموال والمنافع وجناية العمد والخطأ
ولا يجوز من دعوى حد

Settlement is permitted in claims concerning properties, benefits, and deliberate and accidental offences, but it is not permitted in claims of *ḥadd* [punishments].[660]

وإذا ادعى رجل على امرأة نكاحا وهي تجحد فصالحته على مال
بذلته حتى يترك الدعوى جاز وكان معنى الخلع

When a man claims marriage with a woman and she denies [it], and she then makes a settlement with him by giving him some property so that he drops the claim, it is permitted, and it is in the sense of *khul'* (divorce at the instance of the woman).

و إذا ادعت امرأةٌ نكاحا على رجل فصالحها على مال بذله لها لم يجز

When a woman claims marriage with a man and he makes a settlement with her by giving her some property, it is not valid.

و إن ادعى رجل على رجل أنه عبده فصالحه على مال أعطاه جاز
وكان في حق المدعي في معنى العتق على مال

If a man claims against [another] man that [the latter] is his slave, and [the latter] makes a settlement with him for property which [the latter] gives [to] him, it is valid, and it is with respect to the claimant in the sense of setting [a slave] free in exchange for property.[661]

وكل شيء وقع عليه الصلح وهو مستحق بعقد المداينة لم يحمل
على المعاوضة و إنما يحمل على أنه استوفى بعض حقه وأسقط باقيه،
كمن له على رجل ألف درهم جياد فصالحه على خمس مائة زيوف
جاز وصار كأنه أبرأه عن بعض حقه، ولو صالحه على ألف مؤجل
جاز و كأنه أجل نفس الحق

Everything upon which a settlement takes place and it is owed due to a contract of loan, it is not based upon compensation,[662] but it is based upon [the fact] that he took the fulfilment of a part of his right and relinquished the remainder of it, like someone who is owed a thousand good quality dirhams by another [person], and he makes a settlement with him for five hundred dirhams adulterated with alloy,[663] which is valid, and it is as though he has absolved [the debtor] of a part of his right. If, however, he made a settlement with him for a thousand [dirhams] to be paid at a later date, it is [also] valid, and is as if he postponed the right itself.[664]

ولو صالحه على دنانير إلى شهر لم يجز

It is not permitted for him to make a settlement with [the debtor] for

dinars [deferred] up to a month.[665]

ولو كان له ألف مؤجل فصالحه على خمس مائة حالة لم يجز

If there are a thousand [dirhams] due him at a later date and he makes a settlement with him for five hundred [to be paid] immediately, it is not permitted.

ولو كان له ألف درهم سودٌ فصالحه على خمس مائة بيضٍ لم يجز

If a thousand black dirhams are owed him and he makes a settlement with [the debtor] for five hundred white[666] [dirhams], it is not permitted.[667]

ومن وكل رجلا بالصلح عنه فصالحه لم يلزم الوكيل ما صالحه
عليه إلا أن يضمنه والمال لازمٌ للموكل

Whoever appoints an agent [to make] a settlement on his behalf and he makes a settlement with [that party], [then] whatever [the agent] makes the settlement with is not binding on the agent, unless [the agent] [personally] becomes responsible for it, but the property is binding upon the principal [only].

فإن صالح عنه على شيء بغير أمره فهو على أربعة أوجه: إن
صالح بمال وضمنه تم الصلح، كذلك لو قال «صالحتك على ألفي
هذه» أو «على عبدي هذا» تم الصلح ولزمه تسليمها إليه، وكذلك
لو قال «صالحتك على ألف» وسلمها إليه، و إن قال «صالحتك على
ألف» ولم يسلمها إليه فالعقد موقوف: فإن أجازه المدعى عليه
جاز ولزمه الألف، و إن لم يجزه بطل

If [the agent] makes a settlement [with another] on his behalf without his order, then there are four perspectives:

1. If he made the settlement with property and he [personally] is liable to him [for it], the settlement is complete,
2. Similarly, if he says, “I have made a settlement with you for two thousand [dirhams],” or “…for this slave of mine,” the settlement is complete, and the surrender [of the two thousand dirhams or the slave, as the case may be,] to him is binding upon him,

3. Similarly, if he says, “I have made a settlement with you for a thousand [dirhams]” and [immediately] surrenders it to him, and
4. Similarly, if he says, “I have made a settlement with you for a thousand” and does not surrender that to him, [in which case] the contract is suspended, if the defendant permits it, it is allowed and the thousand is binding upon him,[668] but if he does not permit it, it is void.

و إذا كان الدين بين الشريكين فصالح أحدهما من نصيبه على ثوبٍ فشريكه بالخيار: إن شاء اتبع الذي عليه الدين بنصفه، و إن شاء أخذ نصف الثوب، إلا أن يضمن له شريكه ربع الدين

When there is a debt [owed] between two partners and one of the two makes a settlement of his share upon some cloth, then his partner has an option:

1. If he wants, he may pursue the one who owes the debt for his half [of the share of debt], or
2. If he wants, he may take half of the cloth, unless his partner becomes responsible to him for a quarter of the debt.

ولو استوفى نصف نصيبه من الدين كان لشريكه أن يشاركه فيما قبض، ثم يرجعان على الغريم بالباقي

If one [partner] receives half of his share from the debt, it is permitted for his partner to share with him in that which he has taken. Then later they may resort to the debtor for the remainder [of the debt].

ولو اشترى أحدهما بنصيبه من الدين سلعة كان لشريكه أن يضمنه ربع الدين

If one of the two [partners] buys goods with his share of the debt, it is [permitted] for his partner to hold him liable for a quarter of the debt.[669]

و إذا كان السلم بين الشريكين فصالح أحدهما من نصيبه على رأس المال لم يجز عند أبي حنيفة ومحمد رحمهما الله تعالى، وقال أبو يوسف رحمه الله تعالى: يجوز الصلح

When there [exists] a [contract of] *salam* between two partners and one of

them makes a settlement of his share upon the capital, it is not permitted according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them. But Abū Yūsuf, may Allah have mercy on him, said that the settlement is permitted.

و إذا كانت التركة بين ورثة فأخرجوا أحدهم منها بمال أعطوه إياه والتركة عقار أو عروض جاز، قليلا كان ما أعطوه أو كثيرا، فإن كانت التركة فضة فأعطوه ذهبا أو ذهبا فأعطوه فضة، فهو كذلك

When there is inheritance [to be divided] between heirs and they exclude one of themselves from it by [settlement of] some property which they give him, and the inheritance is real property or goods, it is permitted, whether they give him a little or a lot. If the inheritance is silver, and they give [him] gold, or it is gold and they give silver, then it is likewise.[670]

و إن كانت التركة ذهبا وفضة وغير ذلك فصالحوه على ذهب أو فضة فلا بد أن يكون ما أعطوه أكثر من نصيبه من ذلك الجنس حتى يكون نصيبه بمثله والزيادة بحقه من بقية الميراث

If the inheritance is gold and silver plus other than that and they make a settlement with him for gold and silver, then it is essential for whatever they give him to be more than his share in that genus, so that his share is equal to it and the excess is for his right from the remainder of the inheritance.[671]

و إذا كان التركة دينا على الناس فأدخلوه في الصلح على أن يخرجوا المصالح عنه و يكون الدين لهم فالصلح باطل، فإن شرطوا أن يبرئ الغرماء منه ولا يرجع عليهم بنصيب المصالح فالصلح جائز

When the inheritance is a debt owed by people, and they include him in the settlement of that on the basis that they exclude from it the one who makes the settlement, and that the debt is for [the heirs only], then the settlement is void [with that condition]. If they stipulate that he release the debtors from it and not resort to [the inheritors] for the share of the one who made the settlement, then the settlement is permitted.[672]

كتاب الهبة

HIBAH – GIFTS

الهبة تصح بالإيجاب والقبول، وتتم بالقبض

[The contract of] gift (*hibah*) becomes valid by offer and acceptance[673] and it becomes complete with taking possession.

فإن قبض الموهوب له في المجلس بغير إذن الواهب جاز، وإن قبض بعد الافتراق لم تصح، إلا أن يأذن له الواهب في القبض

If the person given the gift (*mawhūb lahū*)[674] takes possession within the [same] session without the authority of the person who gives the gift (*wāhib*),[675] it is permitted, but if he takes possession [of the gift] after separation,[676] it is not valid, unless the person who gives the gift allows him [to take] possession.

وتنعقد الهبة بقوله: وهبت، ونحلت، وأعطيت، وأطعمتك هذا الطعام وجعلت هذا الثوب لك، وأعمرتك هذا الشيء، وحملتك على هذه الدابة، إذا نوى بالحملان الهبة

[The contract of] gift takes place by [the person who gives the gift] saying:

1. “I give you a as a gift…,”
2. “I make a present of to you…,”
3. “I give you…,”
4. “I feed you this food,”
5. “I render this garment yours,”
6. “I have given you this thing for life,” and
7. “I have mounted you on this [riding] animal,” when, by the mounting, he intends it as a gift.

ولا تجوز الهبة فيما يقسم إلا محوزة مقسومة

A gift is not permitted in that which is divisible,[677] unless it is divided and [also] free from rights.[678]

وهبة المشاع فيما لا يقسم جائزة

A gift of common property in that which is not divisible is permitted.[679]

ومن وهب شقصا مشاعا فالهبة فاسدة، فإن قسمه وسلمه جاز

Whoever gives a small portion [of that] which is communal as a gift then the gift is vitiated, but if he divides it and gives it away [then that] is permitted.[680]

ولو وهب دقيقا في حنطة أو دهنا في سمسم فالهبة فاسدة، فإن طحن وسلم لم يجز

If someone gifts flour [which is still] in the [grains of] wheat, or oil in the sesame, the gift is vitiated. So, if he grinds [the grains] and hands [it] over, it is [still] not permitted.

وإذا كانت العين في يد الموهوب له ملكها بالهبة، وإن لم يجدد فيها قبضا

If the material [gift] is in the possession of the one given the gift, then he has ownership of it through gift, even if he does not renew taking possession of it.

وإذا وهب الأب لابنه الصغير هبة ملكها الابن بالعقد، فإن وهب له أجنبيٌّ هبة تمت بقبض الأب

When a father gives gifts to his minor son, the son acquires ownership of it with the contract [itself], [even though there is no possession involved], but if a non-relative gives gifts to him, it is complete by the father taking possession.

وإذا وهب لليتيم هبة فقبضها له وليه جاز

It is permitted if [a non-relative] gives gifts to an orphan and his guardian

takes possession of it for him.

و إن كان في حجر أمه فقبضها له جائزة، وكذلك إن كان في حجر أجنبي يربيه فقبضه له جائز

If someone is [still] in the lap of his mother [as an infant], then her taking possession of it for him is permitted, and likewise, if he is in the lap of a non-relative who is raising him, then his taking possession of it for [the infant] is permitted.

و إن قبض الصبي الهبة بنفسه و هو يعقل جاز

If a minor takes possession of the gift himself, and he is intellectually sound, it is permitted.

و إذا وهب اثنان من واحد دارا جاز

It is permitted if two persons gift one house to a single person.

و إن وهب واحد من اثنين لم تصح عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: تصح

If one person gifts to two persons, then according to Abū Ḥanīfah, may Allah have mercy on him, it is not valid. They,[681] may Allah have mercy on them, however, said that it is valid.

Retraction of a Gift

و إذا وهب لأجنبي هبة فله الرجوع فيها، إلا أن يعوضه عنها، أو تزيد زيادة متصلة، أو يموت أحد المتعاقدين، أو تخرج الهبة من ملك الموهوب له

When someone gives a gift to a non-relative, retracting it is permitted, unless:

1. [The person given the gift] gives a consideration to [the person who gives the gift] for it,[682] or
2. It increases in such a way as is mingled [in it],[683]
3. One of the contracting parties dies,
4. The gift leaves the ownership of the person given the gift.[684]

وإن وهب هبة لذي رحم محرم منه فلا رجوع فيها، وكذلك ما وهبه أحد الزوجين للآخر

If someone gives a gift to an un-marriageable close relative (*dhū raḥm maḥram),* then there is no [right of] retracting it, and likewise whatever one of two spouses gives as a gift to the other.

وإذا قال الموهوب له للواهب: خذ هذا عوضا عن هبتك، أو بدلا عنها، أو في مقابلتها، فقبضه الواهب سقط الرجوع

When the person given the gift says to the giver of the gift:

1. "Take this in consideration for your gift," or
2. "…in exchange for it," or
3. "…as an equivalent for it,"

and the giver of the gift takes it, the [right of] retraction lapses thereby.

وإن عوضه أجنبيٌّ عن الموهوب له متبرعا فقبض الواهب العوض سقط الرجوع

If a non-relative gives to [the giver of the gift] a consideration on behalf of the person given the gift, as a contribution, and the giver of the gift takes the consideration, the [right of] retraction lapses.

وإذا استحق نصف الهبة رجع بنصف العوض، وإن استحق نصف العوض لم يرجع في الهبة شيء، إلا أن يرد ما بقي من العوض ثم يرجع في كل الهبة

If someone is entitled to a half of the gift, [then] he may claim a half of the consideration [from the person who gives the gift]. If he is entitled to a half of the consideration, [then] [the person who gives the gift] may not retract anything of the gift, unless he returns whatever else of the consideration there may be. Thereafter, he may retract the whole of the gift.

ولا يصح الرجوع في الهبة إلا بتراضيهما، أو بحكم الحاكم

Retraction of the gift is not valid except with the consent of both parties, or with the order of the judge (*ḥākim).*

وإذا تلفت العين الموهوبة ثم استحقها مستحق فضمن الموهوب له لم يرجع على الواهب بشيء

When the material gift is ruined and then someone entitled to it appears and takes compensation from the person given the gift, he may not claim anything from the person who gives the gift.

وإذا وهب بشرط العوض اعتبر التقابض في العوضين جميعا، وإذا تقابضا صح العقد وكان في حكم البيع: يرد بالعيب، وخيار الرؤية، وتجب فيها الشفعة

When one gives a gift with the stipulation of a counter consideration, [then] it is determined by the mutual taking possession of both considerations. When both parties have taken possession, the contract [of gift] is valid, and it has the [same] ruling as that of a [contract of] sale in which [the commodity] may be returned due to a blemish, and there is the option to purchase subject to investigation (*khiyār ar-ru'yah)*, and for which there is the right of preemption.

والعمرى جائزة للمعمر له في حال حياته، ولورثته بعد موته

'Umrā (the grant of the use of something for life)[685] is permitted for the person given the gift (*mu'mar lahū)*,[686] during his life, and to his heirs after his death.

والرقبى باطلة عند أبي حنيفة ومحمد رحمهما الله تعالى، وقال أبو يوسف رحمه الله تعالى: جائزة

Granting something as a gift on succession (*ruqbā*)[687] is void, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, but Abū Yūsuf, may Allah have mercy on him, said that it is permitted.

ومن وهب جارية إلا حملها صحت الهبة، وبطل الاستثناء

Whoever gifts a slave-woman as a gift [whilst] excluding her unborn child, the gift is valid but the exclusion is void.

والصدقة كالهبة: لا تصح إلا بالقبض، ولا تجوز في مشاع يحتمل القسمة

Ṣadaqah is like a gift: it is only valid with taking possession and it is not permitted in commonly held property which has the possibility of being divided.

وإذا تصدق على فقيرين بشيء جاز، ولا يجوز الرجوع في الصدقة بعد القبض

When one gives something in charity to two poor people it is permitted. The retraction of charity is not valid after its being taken possession of [by the person given the charity].

ومن نذر أن يتصدق بماله لزمه أن يتصدق بجنس ما تجب فيه الزكاة

Whoever makes a vow that he will give his property in charity, it is binding upon him to donate [something] of the category on which *zakāh* is incumbent.[688]

ومن نذر أن يتصدق بملكه لزمه أن يتصدق بالجميع، ويقال له: أمسك منه مقدار ما تنفقه على نفسك وعيالك إلى أن تكسب مالا، فإذا اكتسبت مالا تصدقه بمثل ما أمسكت لنفسك

Whoever vows to give what he owns as charity, it is binding upon him to give it all, and it is said to him, "Retain [for yourself] of it the amount which you spend on yourself and [on] your family, until you earn [more] wealth. When you have earned [more] wealth, you should donate of that [as charity] equal to what you had retained for yourself."[689]

كتاب الوقف

WAQF – ENDOWMENT

لا يزول ملك الواقف عن الوقف عند أبي حنيفة رحمه الله تعالى
إلا أن يحكم به الحاكم أو يعلقه بموته فيقول: إذا متّ فقد وقفت
داري على كذا، وقال أبو يوسف رحمه الله تعالى: يزول الملك
بمجرد القول، وقال محمد رحمه الله تعالى: لا يزول الملك حتى
يجعل للوقف وليا و يسلمه إليه

The ownership of the endower (*wāqif*) [of property] does not end by endowment, according to Abū Ḥanīfah, may Allah have mercy on him, unless the judge (*ḥākim*) rules thus, or [the endower] connects it to his [own] death, and thus says, "When I die, then I [will] have endowed so-and-so with my house." Abū Yūsuf, may Allah have mercy on him, said that the ownership ends by the mere mention [of endowment],[690] and Muḥammad, may Allah have mercy on him, said that ownership does not end until he appoints a guardian for the endowment and hands it over to him.

و إذا صح الوقف – على اختلافهم – خرج من ملك الواقف، ولم
يدخل في ملك الموقوف عليه

If the endowment is valid, in accordance with the differences [of the Imams], it leaves the ownership of the endower but it does not enter the ownership of the person who has been endowed (*mawqūf ʻalayhi).*[691,692]

ووقف المشاع جائز عند أبي يوسف رحمه الله تعالى. وقال محمد
رحمه الله تعالى: لا يجوز

The endowment of common property is permitted, according to Abū Yūsuf, may Allah have mercy on him, but Muḥammad, may Allah have mercy on him, said that it is not permitted.

ولا يتم الوقف عند أبي حنيفة ومحمد رحمهما الله تعالى حتى يجعل
آخره بجهة لا تنقطع أبدا

According to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, endowment is not complete unless [the endower] renders its conclusion in such a way that it never ceases.[693]

وقال أبو يوسف رحمه الله تعالى: إذا سمى فيه جهة تنقطع جاز،
وصار بعدها للفقراء، و إن لم يسمهم

Abū Yūsuf, may Allah have mercy on him, said that when [the endower] mentions in it a way which ceases, it is permitted, and after that it is for the poor, even if he does not mention them.[694]

و يصح وقف العقار، ولا يجوز وقف ما ينقل ويحول

Endowment of real estate is valid, but the endowment of that which may be moved (i.e. movable property) or altered is not permitted.

وقال أبو يوسف رحمه الله تعالى: إذا وقف ضيعة ببقرها أو
أكرتها وهم عبيده جاز

Abū Yūsuf, may Allah have mercy on him, said, "When one makes an endowment of land [together] with its cattle[695] or its workers, when they are his slaves, it is permitted."

وقال محمد رحمه الله تعالى: يجوز حبس الكراع والسلاح

Muḥammad, may Allah have mercy on him, said that the endowment of horses [and camels] and weapons [in the way of Allah] is permitted.

و إذا صح الوقف لم يجز بيعه، ولا تمليكه، إلا أن يكون مشاعا
عند أبي يوسف رحمه الله تعالى فيطلب الشريك القسمة فتصح
مقاسمته

When endowment is complete, its sale is not allowed, nor transfer of ownership of it, unless it is common property, according to Abū Yūsuf, may Allah have mercy on him, such that [when] a shareowner demands [its] division, the mutual division [of it] is valid.[696]

والواجب: أن يبتدئ من ارتفاع الوقف بعمارته، شرط ذلك الواقف أو لم يشترط

[From the proceeds of the endowment] it is necessary to begin to elevate the endowment by tending it [the endowed property], whether the endower had stipulated that or not.

و إذ وقف دارا على سكنى ولده فالعمارة على من له السكنى، فإن امتنع من ذلك أو كان فقيرا أجرها الحاكم وعمرها بأجرتها، فإذا عمرت ردها إلى من له السكنى

When one endows a house for the dwelling of his son, the repairs are due from the one who has the right to dwell in it. If he refuses [to pay] that, or he is poor, the judge (*ḥākim*) leases it and has it repaired from its rent. When it has been repaired, [the judge (*ḥākim)]* returns it to the one who has the right to dwell in it.

وما انهدم من بناء الوقف وآلته صرفه الحاكم في عمارة الوقف إن احتاج إليه، وإن استغنى عنه أمسكه حتى يحتاج إلى عمارته فيصرفه فيها، ولا يجوز أن يقسمه بين مستحقي الوقف

Whatever of the building or the integral part of the endowment collapses, the judge (*ḥākim*) should, if he requires it, use it on the repair of the endowment.[697] If he does not need it, he should keep it until he requires [it] in his repairs, [and] so, he can utilise it therein.[698] It is not permitted to divide it amongst those entitled to the endowment.

و إذا جعل الواقف غلة الوقف لنفسه أو جعل الولاية إليه جاز عند أبي يوسف رحمه الله تعالى و قال محمد رحمه الله تعالى: لا يجوز

When the endower appoints the proceeds of the endowment for himself, or he appoints the guardianship (*tawliyah*) to himself, it is permitted, according to Abū Yūsuf, may Allah have mercy on him, but Muḥammad, may Allah have mercy on him, said that it is not permitted.

و إذا بنى مسجدا لم يزل ملكه عنه حتى يفرزه عن ملكه بطريقه و يأذن للناس بالصلاة فيه، فإذا صلى فيه واحد زال ملكه عنه عند

أبي حنيفة ومحمدٍ رحمهما الله تعالى، وقال أبو يوسف رحمه الله تعالى: يزول ملكه عنه بقوله «جعلته مسجدا»

When someone builds a mosque, its ownership remains with him until he separates it from his ownership with its path,[699] and permits people to pray in it. So, when [even] a single person has prayed in it, his ownership ceases, according to Abū Ḥanīfah, may Allah have mercy on him, but [Imam] Abū Yūsuf, may Allah have mercy on him, said that his ownership ceases when he says, “I make [this] a mosque.”

ومن بنى سقاية للمسلمين أو خانا يسكنه بنو السبيل أو رباطا أو جعل أرضه مقبرة لم يزل ملكه عن ذلك عند أبي حنيفة رحمه الله تعالى حتى يحكم به حاكم، وقال أبو يوسف رحمه الله تعالى: يزول ملكه بالقول

Whoever builds a watering place for Muslims, an inn for travellers to stay in or a *ribāṭ* fortress, or makes his land a cemetery, his ownership of that does not cease, according to Abū Ḥanīfah, may Allah have mercy on him, until the judge (*ḥākim*) decides it. Abū Yūsuf, may Allah have mercy on him, however, said that his ownership ceases by his statement.[700]

وقال محمد رحمه الله تعالى: إذا استقى الناس من السقاية وسكنوا الخان والرباط ودفنوا في المقبرة زال الملك

Muḥammad, may Allah have mercy on him, however, said, “When people drink from the watering place, reside in the inn and the *ribāṭ* fortress, and bury [their dead] in the cemetery, the ownership [of the endower] ceases.”

كتاب الغصب

GHAṢB – USURPATION

ومن غصب شيئا مما له مثل فهلك في يده فعليه ضمان مثله، و إن
كان مما لا مثل له فعليه قيمته

Whoever usurps a fungible item[701] and it perishes whilst in his possession is responsible for [replacing it with] one similar to it. If, however, it is non-fungible, then its value is due from him.[702]

وعلى الغاصب رد العين المغصوبة، فإن ادعى هلاكها حبسه الحاكم
حتى يعلم أنها لو كانت باقية لأظهرها، ثم قضى عليه ببدلها

The return of the usurped (*maghṣūb*) material [item] is obligatory upon the usurper (*ghāṣib).* If he claims that it was destroyed, then the judge (*ḥākim*) detains him until he knows that if it was still existent, [the usurper] would definitely have presented it. Then, he judges against him [with regards] to its substitution.

والغصب فيما ينقل ويحول

Usurpation is committed in what is moveable and alterable.[703]

و إذا غصب عقارا فهلك في يده لم يضمنه عند أبي حنيفة وأبي
يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى: يضمنه

When someone usurps real estate and it perishes [whilst] in his possession, he is not liable for it, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that he is liable.[704]

وما نقص منه بفعله أو سكناه ضمنه في قولهم جميعا

Whatever loss he incurs in it due to his act or his residing [in it] is liable for it, according to the verdict of all of them, may Allah have mercy on them

all.

و إذا هلك المغصوب في يد الغاصب بفعله أو بغير فعله فعليه ضمانه، و إن نقص في يده فعليه ضمان النقصان

When the usurped [item] perishes in the possession of the usurper, [whether it was] due to his act or not due to his act, then he is liable for it. If a loss [occurred] whilst it was in his possession, then he is liable for the reduction.

ومن ذبح شاة غيره بغير أمره فمالكها بالخيار: إن شاء ضمنه قيمتها وسلمها إليه، و إن شاء ضمنه نقصانها

Whoever slaughters someone else’s sheep or goat without his permission, then its owner has an option:

1. If he wants, he may hold him liable for its [contemporary] value and its [the slaughtered sheep or goat] surrender to him, or
2. If he wants, he may hold him liable for the reduction [in its value].[705]

ومن خرق ثوب غيره خرقا يسيرا ضمن نقصانه، و إن خرق خرقا كثيرا يبطل عامة منافعه فلمالكه أن يضمنه جميع قيمته

Whoever rips a small tear [in] someone else’s garment is liable for the reduction [in its value]. If he rips a large tear such that its uses in general are void, its owner may hold him liable for its complete value.

و إذا تغيرت العين المغصوبة بفعل الغاصب حتى زال اسمها وأعظم منافعها زال ملك المغصوب منه عنها، وملكها الغاصب، وضمنها، ولم يحل له الانتفاع بها حتى يؤدي بدلها، وهذا كمن غصب شاة فذبحها وشواها أو طبخها، أو غصب حنطةً فطحنها، أو حديدا فاتخذه سيفا، أو صفرا فعمله آنية

When the usurped material item alters due to the act of the usurper such that its name (i.e. nature) and most of its main uses cease, [then] the ownership of the victim (*maghṣūb minhu*) also ceases,[706] and the usurper, thereby, acquires its ownership and is liable for it,[707] and it is not lawful for [the usurper] to benefit from it until he gives something in exchange for it.

This is as [when] someone:

1. Usurps a goat and slaughters it, [then] roasts it or cooks it,
2. Usurps wheat and grinds it,
3. [Usurps] a piece of iron and makes it into a sword, or
4. [Usurps some] brass and makes it into a pot.

وإن غصب فضة أو ذهبا فضربها دراهم أو دنانير أو آنية لم يزل ملك مالكها عنها عند أبي حنيفة رحمه الله تعالى

If someone usurps silver or gold, and coins it into dirhams or dinars, or [into] a pot, the ownership of the [rightful] owner does not cease, according to Abū Ḥanīfah, may Allah have mercy on him.

و من غصب ساجة فبنى عليها زال ملك مالكها عنها ولزم الغاصب قيمتها

Whoever usurps a beam and builds upon it, the ownership of it by its [rightful] owner ceases, and [payment of] its price-value is binding upon the usurper.[708]

ومن غصب أرضا فغرس فيها أو بنى، قيل له: اقلع الغرس والبناء وردها إلى مالكها فارغة

Whoever usurps some land and plants in it or builds [on it], it is said to him, "Eradicate the plants and the building, and return it vacant to its owner."

فإن كانت الأرض تنقص بقلع ذلك فللمالك أن يضمن له قيمة البناء والغرس مقلوعا

If the land would suffer a loss due to that eradication, then it is up to the owner to compensate him the value of the eradicated building and the plants.[709]

ومن غصب ثوبا فصبغه أحمر أو سويقا فلته بسمن فصاحبه بالخيار: إن شاء ضمنه قيمة ثوب أبيض ومثل السويق وسلمه للغاصب، وإن شاء أخذهما وضمن ما زاد الصبغ والسمن فيهما

Whoever usurps a garment and dyes it red, or [usurps] barley-broth and

mixes ghee with it, its owner has an option:

1. If he wants, he may hold him liable for the value of the [un-dyed] white garment, and the equivalent of the barley-broth, and submit [those goods] to the usurper, or
2. If he wants, he may take them both [back] and be liable to [the usurper] for what has increased [with regards to] the colour and the ghee in both of them.

ومن غصب عينا فغيبها فضمنه المالك قيمتها ملكها الغاصب بالقيمة والقول في القيمة قول الغاصب مع يمينه إلا أن يقيم المالك البينة بأكثر من ذلك، فإذا ظهرت العين وقيمتها أكثر مما ضمن وقد ضمنها بقول المالك أو ببينة أقامها أو بنكول الغاصب عن اليمين فلا خيار للمالك وهو للغاصب، و إن كان ضمنها بقول الغاصب مع يمينه فالمالك بالخيار: إن شاء أمضى الضمان، و إن شاء أخذ العين ورد العوض

Whoever usurps a material item and causes it to disappear, and the owner holds him liable for its value, the usurper acquires ownership of it upon the [payment of its] value.

The [decisive] statement regarding the value [of the item] is that of the usurper, [together] with his oath, unless the owner provides evidence of it being more than that. So, when the item appears and its value is more that what [the usurper] had paid as compensation, and that he had paid the compensation according to the saying of the owner, or due to the evidence provided by [the owner], or due to the usurper [himself] refraining from [taking] the oath, then there is no option for the owner and [the usurped item] is the usurper's. If however, [the owner] had paid compensation due to the statement of the usurper [himself], with his oath, then the owner has the option:

1. If he wants, he may execute the guarantee, or
2. If he wants, he may take the item and return the consideration.

وولد المغصوبة ونماؤها وثمرة البستان المغصوب أمانة في يد الغاصب إن هلك في يده فلا ضمان عليه، إلا أن يتعدى فيها أو يطلبها مالكها فيمنعها إياه

The offspring of a usurped female, its growth (*namā’*) and the fruit of a usurped orchard are a trust in the hands of the usurper; if they perish in his possession, there is no liability upon him unless he transgresses therein or its owner demanded it [from him] and [the usurper] refused him.

وما نقصت الجارية بالولادة فهو في ضمان الغاصب، فإن كان
في قيمة الولد وفاء به جبر النقصان بالولد، وسقط ضمانه عن
الغاصب

Whatever [financial] loss a slave-woman incurs due to giving birth, it is within the liability of the usurper. So, if there is any sufficiency in the value of the child, the loss is compensated with the child, and its liability shall lapse from the usurper.[710]

ولا يضمن الغاصب منافع ما غصبه إلا أن ينقص باستعماله فيغرم
النقصان

The usurper is not liable for the benefits of what he usurped, unless he damages [it] by using it, in which case he pays a fine for the reduction in value.

و إذا استهلك المسلم خمر الذمي أو خنزيره ضمن قيمتهما، و إن
استهلكهما المسلم لمسلم لم يضمن

When a Muslim wastes the alcohol of a *dhimmī,* or his pigs, he pays compensation according to its value,[711] but if a Muslim wastes them [and they belong] to a Muslim, he is not liable.[712]

كتاب الوديعة

WADĪʿAH – DEPOSITS

الوديعة أمانة في يد المودَع، إذا هلكت في يده لم يضمنها

A deposit[713] (*wadīʿah*) is a trust in the possession of the keeper (*mūdaʿ);*[714] when it perishes [whilst] in his possession, he is not liable for it.[715]

وللمودع أن يحفظها بنفسه وبمن في عياله، فإن حفظها بغيرهم
أو أودعها ضمن إلا أن يقع في داره حريق فيسلمها إلى جاره، أو
يكون في سفينة و هو يخاف الغرق فيلقيها إلى سفينة أخرى

The keeper (bailee) may safeguard it himself, or by means of someone who is in his household.[716] Then, if he safeguards it by someone other than them, or deposits it [with someone], he is liable [for any loss that incurs], unless a fire occurs in his house and therefore he surrenders it [for safekeeping] to his neighbour, or he is in a ship and fears its sinking, and so throws it into another ship.

و إن خلطها المودع بماله حتى لا تتميز ضمنها، فإن طلبها صاحبها
فحبسها عنه وهو يقدر على تسليمها ضمنها

If the keeper mixes it with his own property in such a way that it cannot be distinguished, he is liable for it, or if its owner (bailor) demands it and he keeps it back from him whilst he is able to hand it over, he is liable for it.[717]

و إن اختلطت بماله من غير فعله فهو شريك لصاحبها

If it mixes with his goods without his action, then he becomes a partner with its owner.[718]

و إن أنفق المودع بعضها وهلك الباقي ضمن ذلك القدر

If the keeper spends some of it and the remainder perishes, he is liable for that amount [which perished].

فإن أنفق المودع بعضها ثم رد مثله فخلطه بالباقي ضمن الجميع

If the keeper spends some of it and returns a similar [amount] of it and mixes it with the rest, he is liable for all of it [if it perished].

و إذا تعدى المودع في الوديعة – بأن كانت دابة فركبها أو ثوبا فلبسه أو عبدا فاستخدمه، أو أودعها عند غيره - ثم أزال التعدي وردها إلى يده زال الضمان

When the keeper transgresses in [the rules of] the deposit, for instance:

1. It is a [riding] animal and he rides it, or
2. A garment and he puts it on, or
3. A slave and he takes service from him, or
4. He deposits it with someone else,

then he removes the transgression and returns it to his [own] possession, the liability [also] ceases.

فإن طلبها صاحبها فجحدها إياه ضمنها، فإن عاد إلى الاعتراف لم يبرأ من الضمان

If its owner demands it and he denies him it,[719] he is liable for it, and if he [later] returns to admission [of the deposit], he is not free from the liability.

وللمودع أن يسافر بالوديعة و إن كان لها حمل ومؤنة

The keeper may travel with the deposit, even though it is a burden and discomfort.[720]

و إذا أودع رجلان عند رجل وديعة ثم حضر أحدهما يطلب نصيبه منها لم يدفع إليه شيئا عند أبي حنيفة رحمه الله تعالى حتى يحضر الآخر، وقال أبو يوسف ومحمد رحمهما الله تعالى: يدفع إليه نصيبه

When two men place a deposit with one [and the same] man, [and] then one of them appears and demands his share of it, [the keeper] should not give him anything, according to Abū Ḥanīfah, may Allah have mercy on him, until

the other [depositor] appears. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that he should give his share to him.

وإن أودع رجل عند رجلين شيئا مما يقسم لم يجز أن يدفعه أحدهما إلى الآخر ولكنهما يقتسمانه فيحفظ كل واحد منهما نصفه، وإن كان مما لا يقسم جاز أن يحفظه أحدهما بإذن الآخر

If a man deposits a divisible item between two men, it is not permitted for either of them to give it to the other [keeper], but they both divide it and each of the two safeguards his [respective] half.[721] If, however, it is indivisible, it is permitted for [only] one of the two to safeguard it, subject to the permission of the other.[722]

وإذا قال صاحب الوديعة للمودع «لا تسلمها إلى زوجتك» فسلمها إليها لم يضمن

When the owner of the deposit says to the keeper, “Do not hand it over to your wife,” but he hands it over [to his wife], he is not held liable [for any loss incurred].[723]

وإن قال له «احفظها في هذا البيت» فحفظها في بيت آخر من الدار لم يضمن، وإن حفظها في دار أخرى ضمن

If he says to him, “Safeguard it in this room” and he safeguards it in another room of the [same] house, he is not held liable, but if he safeguards it in another house, he is held liable [for any loss].[724]

كتاب العارية

‘ĀRIYAH – LOAN (OF T HE USE OF A COMMODITY)

العارية جائزة وهي: تمليك المنافع بغير عوض

Loan [of the use of commodities][725] is permitted and that is to vest [someone] with the ownership of [their] uses without a consideration.

وتصح بقوله: أعرتك وأطعمتك هذه الأرض ومنحتك هذا الثوب، وحملتك على هذه الدابة، إذا لم يرد به الهبة، وأخدمتك هذا العبد، وداري لك سكنى، وداري لك عمرى سكنى

It is concluded when someone says:

1. “I lend you and I feed you [from the produce of] this land,”
2. “I bestow on you this garment,”
3. “I mount you on this [riding] animal” – when, by that, he does not intend to gift,[726]
4. “I make this slave serve you,”
5. “My house is an abode for you,” or
6. “My house is for you for life (*‘umrā*) and a residence.”

وللمُعير أن يرجع في العارية متى شاء

The lender (*mu‘īr*) may retract the loan whenever he wants.

والعارية أمانة في يد المستعير: إن هلكت من غير تعد لم يضمن المستعير

The loan is a trust in the possession of the borrower (*musta‘īr);* if it perishes without transgression, the borrower is not liable.[727]

وليس للمستعير أن يؤجر ما استعاره فإن آجره فهلك ضمن، وله أن يعيره إذا كان المستعار مما لا يختلف باختلاف المستعمِل

The borrower may not lease out that which he has borrowed. Thus, if he does lease it and it perishes, he is liable. He may lend it [to someone else] when the borrowed item (*musta'ār*) is of such a nature that it does not alter by the changing of the user.

وعارية الدراهم والدنانير والمكيل والموزون قرض

The loan of dirhams, dinars, measured [items] and weighed [items] is a [monetary] loan (*qarḍ*).[728]

وإذا استعار أرضا ليبني فيها أو يغرس جاز، وللمعير أن يرجع عنها ويكلفه قلع البناء والغرس

When someone borrows some land so that he may build upon it, or plant in it, it is permitted, and the lender may take it back and compel [the borrower] to demolish the building and [remove] the plants.

فإن لم يكن وقّت العارية فلا ضمان عليه، وإن كان وقّت العارية ورجع قبل الوقت ضمن المعير ما نقص البناء والغرس بالقلع

If [the lender] had not stipulated a time for the loan, there is no liability against him, but if he had stipulated a time for the loan and takes it back before the [stipulated] time, the lender is liable[729] to the borrower for whatever loss the building and the plants incur due to their demolition and removal.

وأجرة رد العارية على المستعير، وأجرة رد العين المستأجرة على المؤجر، وأجرة رد العين المغصوبة على الغاصب، وأجرة رد العين المودعة على المودع

The remuneration (*ujrah*) for returning the loan is upon the borrower,[730] the remuneration for returning a leased item is upon the lessor, the remuneration for returning a usurped item is upon the usurper and the remuneration for returning a deposited item is upon the person with whom it is deposited.

و إذا استعار دابة فردها إلى إصطبل مالكها فهلكت لم يضمن،
و إن استعار عينا وردها إلى دار المالك ولم يسلمها إليه لم يضمن،
و إن رد الوديعة إلى دار المالك ولم يسلمها إليه ضمن

When someone borrows a [riding] animal and returns it to the stable of its owner, and it perishes, [the borrower] is not liable, and [likewise] if he borrows an item and returns it to the house of the owner but does not hand it to him, he is not liable, but if he returns a deposit to the house of the owner and does not submit it to [the person who entrusted it to him], he is liable.

والله أعلم

And Allah knows best.

كتاب اللقيط

LAQĪṬ – FOUNDLINGS

اللقيط: حر، ونفقته من بيت المال

The foundling is free[731] and his expenditure is from the treasury (*bayt al-māl).*

وإن التقطه رجل لم يكن لغيره أن يأخذه من يده، فإن ادعى مدع أنه ابنه فالقول قوله مع يمينه، وإن ادعاه اثنان ووصف أحدهما علامة في جسده فهو أولى به

If a man finds him, then no-one else will have [the right] to take him from the possession of [the finder]. Then, if someone claims him to be his son, his saying is the [legally decisive] statement, [together] with his oath, [but] if two men claim him and one of the two describes a mark on his body, then he has more right to him.[732]

وإذا وجد في مصر من أمصار المسلمين أو في قرية من قراهم فادعى ذمي أنه ابنه ثبت نسبه منه وكان مسلما، وإن وجد في قرية من قرى أهل الذمة أو في بيعة أو كنيسة كان ذميا

If he is found in one of the Muslims' cities, or in one of their villages, and a *dhimmī* claims him to be his son, the lineage of [the foundling] from him is established, and he is [deemed to be] a Muslim [as against the *dhimmī],* but if he is found in a village of the *dhimmīs,* in a synagogue or a church, [then] he is [deemed to be] a *dhimmī.*

ومن ادعى أن اللقيط عبده لم يقبل منه، وكان حرا، وإن ادعى عبد أنه ابنه ثبت نسبه منه، وكان حرا

Whoever claims the foundling to be his slave [or his slave-woman], it is not accepted from him, and he is free, and if a slave claims him to be his son,

his lineage from him is established but he is free.

و إن وجد مع اللقيط مال مشدود عليه فهو له

If goods are found with the foundling, tied to him, then they are his.

ولا يجوز تزويج الملتقط ولا تصرفه في مال اللقيط

The one who finds him (*multaqiṭ*) is not permitted to marry [him or her] off,[733] and neither [is he permitted] to transact with his property.

ويجوز أن يقبض له الهبة و يسلمه في صناعة و يؤاجره

It is permitted to take possession of gifts on his behalf, and [it is permitted] to submit him to a trade and to hire him out for work.

كتاب اللقطة

LUQṬAH – FOUND PROPERTY

اللقطة: أمانة في يد الملتقط، إذا أشهد الملتقط أنه يأخذها
ليحفظها و يردها على صاحبها

Found property (*luqṭah*) is a trust in the hands of the finder (*multaqiṭ);* if he takes a witness that he is taking it in order to preserve it and to return it to its owner.

فإن كانت أقل من عشرة دراهم عرفها أياما، و إن كانت عشرة
فصاعدا عرفها حولا كاملا

If it is [worth] less than ten dirhams, then he publicises it for a few days,[734] but if it is [worth] more, [then] he publicises it for a whole year.

فإن جاء صاحبها و إلا تصدق بها، فإن جاء صاحبها وهو قد تصدق
بها فهو بالخيار: إن شاء أمضى الصدقة، و إن شاء ضمن الملتقط

If the owner [of the found property] arrives, [it is good], otherwise [the finder] may give it away in charity. If, however, its owner does turn up but [the finder] has given it in charity, then [the owner] has an option:

1. If he wants, he may give effect to the charity,[735] or
2. If he wants, he may charge the finder.[736]

ويجوز الالتقاط في الشاة والبقر والبعير، فإن أنفق الملتقط عليها بغير
إذن الحاكم فهو متبرع، و إن أنفق بإذنه كان ذلك دينا على صاحبها

The taking [into protective custody] (*luqṭah*) of goats, cows and camels is permitted.[737] If the finder spends on them without the authorisation of the judge (*ḥākim),* then that is a donation, but if he spends [on them] with his authorisation, then that is a debt upon its owner.

و إذا رفع ذلك إلى الحاكم نظر فيه، فإن كان للبهيمة منفعة آجرها وأنفق عليها من أجرتها، و إن لم يكن لها منفعة وخاف أن تستغرق النفقة قيمتها باعها الحاكم وأمر بحفظ ثمنها

When this [case of finding the animal] is raised with the judge (*ḥākim)*, he looks into it:

1. If there is a benefit in the animal, he hires it on lease[738] and spends upon it from its remuneration,
2. If there is no benefit in it, and he fears that expenditure will consume its value, the judge (*ḥākim*) sells it and orders the protection of its payment.

و إن كان الأصلح الإنفاق عليها أذن في ذلك وجعل النفقة دينا على مالكها، فإذا حضر مالكها فللملتقط أن يمنعه منها حتى يأخذ النفقة

If expenditure upon it is better, [the judge (*ḥākim*)] authorises that and he makes the expenses a debt against its owner. So, when its owner appears, the finder may deny him [the animal] until [the finder] receives the expenses [from the owner].

ولقطة الحل والحرم سواء

Property found outside of the Ḥaram[739] and inside the Ḥaram are [deemed] the same.

و إذا حضر الرجل فادعى أن اللقطة له لم تدفع إليه حتى يقيم البينة، فإن أعطى علامتها حل للملتقط أن يدفعها إليه، ولا يجبر على ذلك في القضاء

When a person appears and claims that the found property is his, it is not given to him until he produces evidence. If he describes a [distinguishing] mark upon it then it is lawful for the finder to give it to him, but he is not compelled to do that as a judgement.

ولا يتصدق باللقطة على غني

One should not give found property in charity to a wealthy person.

وإن كان الملتقط غنيا لم يجز له أن ينتفع بها، وإن كان فقيرا فلا بأس أن ينتفع بها، ويجوز أن يتصدق بها إذا كان غنيا على أبيه وابنه وأمه وزوجته إذا كانوا فقراء

If the finder is wealthy, it is not permitted for him to benefit from it, but if he is poor, then there is no objection to him benefitting[740] from it. If he is without need it is permissible for him to give it as *ṣadaqah* to his father, son or wife if they are poor.

كتاب الخنثى

KHUNTHĀ – HERMAPHRODITES

إذا كان للمولود فرج وذكر فهو خنثى

If a newly-born has a vulva as well as a penis, then it is a hermaphrodite.

فإن كان يبول من الذكر فهو غلام، و إن كان يبول من الفرج فهو أنثى، و إن كان يبول منهما والبول يسبق من أحدهما نسب إلى الأسبق منهما، و إن كانا في السبق سواء فلا يعتبر بالكثرة عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: ينسب إلى أكثرهما بولا

If he urinates from the penis, then he is a boy, but if he urinates from the vulva, then he is a female.[741] If, however, he urinates from both, and the urine comes first from either of the two, it is attributed to the one that it comes first from in either of the two. If it comes out of both simultaneously, then the majority is not taken into account, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[742] may Allah have mercy on them, said that it is attributed to the one of the two which has the majority of the urine discharge.[743]

و إذا بلغ الخنثى وخرجت له لحية أو وصل إلى النساء فهو رجل

When the hermaphrodite reaches majority and a beard emerges, or he [sexually] couples with a woman, then he is a man [in legal terms].

و إن ظهر له ثدي كثدي المرأة، أو نزل له لبن في ثديَّيه، أو حاض، أو حبل، أو أمكن الوصول إليه من جهة الفرج، فهو امرأة

If, however:

1. His[744] bust swells, like the bosom of a woman,
2. Milk gathers in his breasts,

3. He experiences menstruation,
4. He becomes pregnant, or
5. [Sexual] coupling with him becomes possible via the vulva, then he is a woman.

فإن لم تظهر له إحدى هذه العلامات فهو خنثى مشكل

If none of these features appear in him, then he is an indistinguishable hermaphrodite (*khunthā mushkil).*

و إذا وقف خلف الإمام قام بين صف الرجال والنساء

When he stands behind the Imam, he should stand between the rows of the men and the women.[745]

وتبتاع له أمة من ماله تختنه إن كان له مال، فإن لم يكن له مال ابتاع له الإمام من بيت المال أمة، فإذا ختنته باعها ورد ثمنها إلى بيت المال

A slave-woman is purchased from his wealth to circumcise him, [that is] if he has any wealth, but if he does not have any wealth, the Imam purchases the slave-woman for him from the treasury. When she has circumcised him, [the Imam] should sell her and return the payment for her to the treasury.

و إن مات أبوه وخلف ابنا وخنثى فالمال بينهما عند أبي حنيفة رحمه الله تعالى على ثلاثة أسهم : للابن سهمان، وللخنثى سهم، وهو أنثى عند أبي حنيفة رحمه الله تعالى في الميراث إلا أن يثبت غير ذلك

If his father dies, and leaves behind a boy and a hermaphrodite, then the property is [divided] between the two, according to Abū Ḥanīfah, may Allah have mercy on him, into three shares; two shares are for the boy and one share for the hermaphrodite; [the hermaphrodite] is a woman, according to Abū Ḥanīfah, may Allah have mercy on him, in the [case of] inheritance, unless the contrary is proven.

وقالا رحمهما الله تعالى : للخنثى نصف ميراث الذكر ونصف ميراث الأنثى، وهو قول الشعبي، واختلفا في قياس قوله

They,[746] may Allah have mercy on them, however, said that the hermaphrodite has a half of the inheritance of the male, and a half of the inheritance of the female. That is [also] the verdict of ash-Sha‘bī, may Allah have mercy on him, but they,[747] may Allah have mercy on them, have differed in the analysis of his verdict.

قال أبو يوسف رحمه الله تعالى: المال بينهما على سبعة أسهم:
للابن أربعة، وللخنثى ثلاثة

Abū Yūsuf, may Allah have mercy on him, said that the property is [divided] between the two into seven shares; four shares for the boy and three shares for the hermaphrodite.[748]

وقال محمد رحمه الله تعالى: المال بينهما على اثني عشر سهما:
للابن سبعة، وللخنثى خمسة

Muḥammad, may Allah have mercy on him, said that the property is [divided] between them into twelve shares; seven shares for the boy and five for the hermaphrodite.[749]

كتاب المفقود

MAFQŪD – MISSING PERSONS

إذا غاب الرجل، فلم يعرف له موضع، ولا يعلم أحيٌّ هو أم ميتٌ، نصب القاضي من يحفظ ماله ويقوم عليه ويستوفي حقوقه، وينفق على زوجته وأولاده الصغار من ماله

When a man disappears[750] and his whereabouts is not known, and it is not known whether he is alive or dead, the judge appoints someone to safeguard his property, to oversee it and receive [for him] his rights, spend on his wife and [on] his minor children from his wealth.

ولا يفرق بينه وبين امرأته

[The judge] does not cause separation between him and his wife [by divorce].

فإذا تم له مائة وعشرون سنة من يوم ولد حكمنا بموته واعتدت امرأته، وقسم ماله بين ورثته الموجودين في ذلك الوقت، ومن مات منهم قبل ذلك لم يرث منه، ولا يرث المفقود من أحد مات في حال فقده

When one hundred and twenty years have passed from the day he was born, we adjudicate his death;[751] his wife performs the *'iddah* (waiting period before she may remarry), his property is distributed amongst his heirs who are present[752] at that time, but whosoever of them has died prior to that[753] does not inherit anything from that [property of the missing person] and the missing person does not inherit from anyone who dies during his state of being lost.

كتاب الإباق

IBĀQ – FUGITIVE SLAVES

إذا أبق المملوك فرده رجل على مولاه من مسيرة ثلاثة أيام فصاعدا فله عليه جعله و هو أربعون درهما

When a slave runs away and a man returns him to his master from a distance of three days away or more, then he is due from [the master] his reward and that is forty dirhams.

و إن رده لأقل من ذلك فبحسابه

If [the man] returned him from less than that [distance], then it is according to that.[754]

و إن كانت قيمته أقل من أربعين درهما قضى له بقيمته إلا درهما

If the value of [the fugitive slave] is less than forty dirhams, then it is decided for him according to his value minus one dirham.[755]

و إن أبق من الذي رده فلا شيء عليه و لا جعل له

If [the slave] had run away from [the same person] who returned him, then there is nothing due from [that person], but there is no reward for him [either].

وينبغي أن يشهد إذا أخذه أنه يأخذه ليرده على صاحبه

One ought to have a witness when he captures [the fugitive slave] that he has seized him for the purpose of returning him to his master.

فإن كان العبد الآبق رهنا فالجعل على المرتهن

If the fugitive slave is collateral [in a contract of pledge], then the reward is due from the pledgee.[756]

كتاب إحياء الموات

IḤYĀ AL-MAWĀT – REVIVIFYING BARREN LAND

الموات: ما لا ينتفع به من الأرض لانقطاع الماء عنه، أو لغلبة الماء عليه، أو ما أشبه ذلك مما يمنع الزراعة

Mawāt is that piece of land from which benefit is not derived due to:

1. The cessation of the water [supply] to it,
2. Water overwhelming it, or
3. Whatever resembles that of such things that prevent cultivation.[757]

فما كان منه عاديا لا مالك له، أو كان مملوكا في الإسلام لا يعرف له مالك بعينه وهو بعيد من القرية بحيث إذا وقف إنسان في أقصى العامر فصاح لم يسمع الصوت فيه، فهو موات

So, whatever of that [barren land]:

1. Customarily had no owner, or
2. It is owned under Islam and its owner is not specifically known, and
3. [It is] far from the village such that when a person stands in the furthest part of the population and yells, his voice is not heard in it,

that [land] is *mawāt.*

من أحياه بإذن الإمام ملكه، و إن أحياه بغير إذنه لم يملكه عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يملكه

Whoever revives [barren land] with the permission of the Imam[758] owns it, but if he revives it without the permission of [the Imam], he does not own it, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he owns it.

ويملك الذمي بالإحياء كما يملكه المسلم

A *dhimmī* may acquire ownership of [barren land] by revival [of it] just in the same way as a Muslim may acquire ownership of it.

ومن حجّر أرضا ولم يعمرها ثلاث سنين أخذها الإمام منه ودفعها إلى غيره

Whoever demarcates some land with stones and does not cultivate it for three years, the Imam takes it from him and gives it to someone else.[759]

ولا يجوز إحياء ما قرب من العامر ويترك مرعى لأهل القرية ومطرحا لحصائدهم

It is not permitted to revivify that [land] which is close to inhabited land, and it should be left as pasture for [the animals of] the villagers, and as a dump for their harvests.

ومن حفر بئرا في برية فله حريمها، فإن كانت للعطن فحريمها أربعون ذراعا، وإن كانت للناضح فحريمها ستون ذراعا، وإن كانت عينا فحريمها خمس مائة ذراع

Whoever digs a well in the wilderness then its precincts are [also] his. So, if it is for drinking [water] then its precincts are forty cubits (*dhirā'*).[760] If it is for irrigation, then its precincts are sixty cubits, and if it is a spring, then its precincts are five hundred cubits.

فمن أراد أن يحفر بئرا في حريمها منع منه

Whoever wants to dig a well within the precincts of [that well], is to be prevented.[761]

وما ترك الفرات أو الدجلة وعدل عنه الماء فإن كان يجوز عوده إليه لم يجز إحياؤه، وإن كان لا يجوز أن يعود إليه فهو كالموات، إذا لم يكن حريما لعامر يملكه من أحياه بإذن الإمام

Whatever the [rivers] Euphrates and the Tigris[762] leave [behind],[763] and the water deviates from there, then if it is possible for [the river] to return there, its revivification is not permitted,[764] but if its return to that place is not

possible, then it is like barren land (*mawāt);* if it is not a precinct of an inhabited [piece of land], the one who revives it with the permission of the Imam, acquires its ownership.

ومن كان له نهر في أرض غيره فليس له حريم عند أبي حنيفة رحمه الله تعالى إلا أن يكون له البينة على ذلك، وعندهما رحمهما الله تعالى: له مسناة النهر يمشي عليها و يلقي عليها طينه

Whoever has a river[765] in the land of someone else, then it has no precinct,[766] according to Abū Ḥanīfah, may Allah have mercy on him, unless there is evidence for him of that [precinct], but according to them,[767] may Allah have mercy on them, the jetty of the river upon which he walks and throws its mud is his.[768]

كتاب المأذون

MA'DHŪN – AUTHORISED SLAVES

إذا أذن المولى لعبده إذنا عاما جاز تصرفه في سائر التجارات:
وله أن يشتري، ويبيع، ويرهن، ويسترهن

When the master authorises his slave with a general authority, his transacting in all trades is permitted, and he may buy, sell, give a pledge and take a pledge.

وإن أذن له في نوع منها دون غيره فهو مأذون في جميعها، فإذا أذن له في شيءٍ بعينه فليس بمأذون

If [the master] authorised him for one type [of transaction] from them and no other, then he is [still] authorised in all of them. If he authorises him in one particular thing, then he is not authorised [in general].

وإقرار المأذون بالديون والغصوب جائز

The acknowledgement of the authorised slave (*ma'dhūn*) regarding debts and usurped [goods] is permitted.

وليس له أن يتزوج، ولا أن يزوج مماليكه، ولا يكاتب، ولا يعتق على مال، ولا يهب بعوض ولا بغير عوض، إلا أن يهدي اليسير من الطعام أو يضيف من يطعمه

He may not:

1. Get married, nor
2. Can he marry off his slaves,[769]
3. Write a contract for a slave to purchase his freedom (*kitābah),*
4. Free [a slave] against property,
5. Give a gift [in return] for a consideration or without a consideration,

unless he gifts a small amount of food, or he hosts someone who fed him.

وديونه متعلقة برقبته: يباع فيها للغرماء، إلا أن يفديه المولى،
ويقسم ثمنه بينهم بالحصص

His debts [remain] attached to his slavehood, for which he may be sold for the sake of the creditors – unless the master ransoms him – and his price is divided amongst them according to [their] shares. [770]

فإن فضل من ديونه شيء طولب به بعد الحرية، وإن حجر عليه
لم يصر محجورا عليه حتى يظهر الحجر بين أهل السوق

If anything of his debts is left over, it is demanded from him after his being set free. If limits are set on his competence [by his master], he does not become [legally] limited (*maḥjūr ʻalayhi*) until the limitation becomes apparent among the people of the market.[771]

فإن مات المولى أو جن أو لحق بدار الحرب مرتدا صار المأذون
محجورا عليه

If the master dies, becomes insane or moves to enemy territory as an apostate, the *ma'dhūn's* legal competence has a limit placed on it.

ولو أبق العبد المأذون صار محجورا عليه

If the *ma'dhūn* runs away, his legal competence has a limit placed on it.

وإذا حجر عليه فإقراره جائز فيما في يده من المال عند أبي حنيفة
رحمه الله تعالى، وقالا رحمهما الله تعالى: لا يصح إقراره

When [the *ma'dhūn's]* legal competence has a limit placed on it, then his acknowledgement is permitted concerning whatever is in his possession, according to Abū Ḥanīfah, may Allah have mercy on him.[772] They,[773] may Allah have mercy on them, however, said that his acknowledgement is not valid.

وإذا لزمته ديون تحيط بماله ورقبته لم يملك المولى ما في يده

When there are debts binding upon him, which overwhelm his property and his slavehood,[774] the master does not acquire ownership of what is in his

possession.[775]

فإن أعتق عبيده لم يعتقوا عند أبي حنيفة رحمه الله تعالى. وقالا
رحمهما الله تعالى: يملك ما في يده

If [the master] sets the slaves of [the *ma'dhūn]* free, they are not [legally] free,[776] according to Abū Ḥanīfah, may Allah have mercy on him, but they,[777] may Allah have mercy on them, said that [the master] acquires ownership of what is in the possession of [the *ma'dhūn]*.

وإذا باع عبد مأذون من المولى شيئا بمثل قيمته أو أكثر جاز،
وإن باع بنقصان لم يجز

It is permitted for the *ma'dhūn* slave to sell something to the master according to its customary value (*mithl al-qīmah*) or more, but if he sells it at a loss, it is not permitted.

وإن باعه المولى شيئا بمثل القيمة أو أقل جاز البيع، فإن سلمه
إليه قبل قبض الثمن بطل الثمن، وإن أمسكه في يده حتى يستوفيَ
الثمن جاز

If the master sells something [to his slave] according to the customary value or less, the sale is permitted, and if he surrenders it to [the slave] prior to taking possession of the payment, the payment is void, but it is permitted if [the master] withholds [the object of sale] in his possession until he receives payment.[778]

وإن أعتق المولى العبد المأذون وعليه ديون فعتقه جائز، والمولى
ضامن بقيمته للغرماء، وما بقي من الديون يطالب به المعتق

If the master sets the *ma'dhūn* slave free while he [the slave] owes debts, his setting free is permitted, but the master is liable for his value to the creditors, and whatever of the debts remains, the freed slave is demanded of it.

وإذا ولدت المأذونة من مولاها فذلك حجر عليها

When a *ma'dhūn*[779] slave-woman gives birth to [the child of] her master,

that is [enough for] placing a limit on her competence.[780]

وإن أذن ولي الصبي للصبي في التجارة فهو في الشراء والبيع
كالعبد المأذون، إذا كان يعقل البيع والشراء

If a child's guardian authorises a minor to trade, then he is like the *ma'dhūn* slave in buying and selling, if he comprehends [the affairs of] buying and selling.

كتاب المزارعة

MUZĀRA'AH **– CROPSHARING**

قال أبو حنيفة رحمه الله تعالى: المزارعة بالثلث والربع باطلة، وقالا رحمهما الله تعالى: جائزة، وهي عندهما رحمهما الله تعالى على أربعة أوجهٍ: إذا كانت الأرض والبذر لواحد والعمل والبقر لواحد جازت المزارعة، و إن كانت الأرض لواحد والعمل والبقر والبذر لآخر جازت المزارعة، و إن كانت الأرض والبذر والبقر لواحد والعمل لواحد جازت، و إن كانت الأرض والبقر لواحد والبذر والعمل لواحد فهي باطلة

Abū Ḥanīfah, may Allah have mercy on him, said, "Cropsharing (*muzāra'ah*) for a third or a quarter [portion] is void." they,[781] may Allah have mercy on them, however, said that it is permitted, and according to them, it is of four types:

1. When the land and the seeds belong to one person, and the labour and the oxen belong to another person, cropsharing is permitted,
2. If the land belongs to one and the labour, oxen and seeds belong to the other person, cropsharing is permitted,
3. If the land, the seeds and the oxen belong to one person and the labour belongs to another person, cropsharing is permitted,
4. If the land and the oxen belong to one person and the seeds and the labour belong to another person, cropsharing is void.

ولا تصح المزارعة إلا على مدة معلومة، و أن يكون الخارج بينهما مشاعا، فإن شرطا لأحدهما قفزانا مسماة فهي باطلة، وكذلك إذا شرطا ما على الماذيانات والسواقي

Cropsharing is not valid unless it is for a known duration, and when the produce is [divided] between both of them jointly. So, if both of them

stipulate that one of them has specified *qafīzs*, then it is void, [and] likewise, if they stipulate what [grows on] canals and irrigation ditches [it is void].[782]

و إذا صحت المزارعة فالخارج بينهما على الشرط، و إن لم تخرج الأرض شيئا فلا شيء للعامل

When cropsharing is valid, the produce is [divided] between them upon the [stipulated] condition, but there is nothing for the labourer if the land does not produce anything.

و إذا فسدت المزارعة فالخارج لصاحب البذر، فإن كان البذر من قبل رب الأرض فللعامل أجر مثله، لا يزاد على مقدار ما شرط له من الخارج

If the cropsharing is invalid, the produce is for the owner of the seeds. Then, if the seeds are from the landowner, the labourer has remuneration at a customary rate (*mithl*) not exceeding the amount of what was stipulated for him of the produce.[783]

و قال محمد رحمه الله تعالى: له أجر مثله بالغا ما بلغ

Muḥammad, may Allah have mercy on him, said that he has remuneration at a customary rate which may reach whatever [amount] it may reach.

و إن كان البذر من قبل العامل فلصاحب الأرض أجر مثلها

If the seeds are from the labourer, then the landowner has remuneration at a customary rate.

و إذا عقدت المزارعة فامتنع صاحب البذر من العمل لم يجبر عليه، و إن امتنع الذي ليس من قبله البذر أجبره الحاكم على العمل

When the contract of cropsharing is concluded, and the owner of the seeds ceases to work, he is not compelled, but if the one who is not the owner of the seeds ceases [to work], the *ḥākim* compels him to work.

و إذا مات أحد المتعاقدين بطلت المزارعة

If one of the two contracting parties dies, then the [contract of] cropsharing is void.

و إذا انقضت مدة المزارعة والزرع لم يدرك كان على المزارع أجر مثل نصيبه من الأرض إلى أن يستحصد

When the term of the cropsharing [contract] elapses, and the crops have not [yet] ripened, the customary [rate of] payment according to his share of the land is due upon the cultivator until they ripen.[784]

والنفقة على الزرع عليهما على مقدار حقوقهما

The expenses [spent] on the crops are due from both of them according to the measure of their shares.

وأجرة الحصاد والدياس والرفاع والتذرية عليهما بالحصص، فإن شرطاه في المزارعة على العامل فسدت

The wages of reaping, threshing, gleaning and winnowing are upon the both of them, according to their [respective] shares. So, if they stipulated that [as] a condition in [the contract of] cropsharing as [an obligation] upon the labourer, then [the contract of cropsharing] is void.

كتاب المساقاة

MUSĀQĀH – CROPSHARING BY IRRIGATION

قال أبو حنيفة رحمه الله تعالى: المساقاة بجزء من الثمرة باطلة،
وقالا رحمهما الله تعالى: جائزة إذا ذكرا مدة معلومة، وسميا جزأ
من الثمرة مشاعا

Abū Ḥanīfah, may Allah have mercy on him, said, "Cropsharing by irrigation (*musāqāh*) [in exchange] for a portion of the fruits is void." They,[785] may Allah have mercy on them, said that it is permitted when both of them mention a known duration and nominate a portion of the fruit to be shared.

وتجوز المساقاة في النخل والشجرة والكرم والرطاب وأصول
الباذنجان، فإن دفع نخلا فيه ثمرة مساقاة والثمرة تزيد بالعمل
جاز، وإن كانت قد انتهت لم يجز

Musāqāh is permitted in date-palms, trees, grape-vines, vegetables and aubergines. So, if one gives a date-palm on which there is fruit for irrigation, and the fruit increases due to the labour, it is permitted, but if [the fruit] has ceased, [then] it is not permitted.[786]

وإذا فسدت المساقاة فللعامل أجر مثله

When *musāqāh* becomes invalid, then the labourer is due wages according to his [customary rate] (*mithl).*

وتبطل المساقاة بالموت

Musāqāh becomes void by the death [of either party].

وتفسخ بالأعذار كما تفسخ الإجارة

[The contract of irrigation] may be rescinded due to [legal] excuses, just as [the contract of] lease (*ijārah*) may be rescinded.

كتاب النكاح

NIKĀḤ – MARRIAGE

النكاح ينعقد بالإيجاب والقبول، بلفظين يعبر بهما عن الماضي، أو يعبر بأحدهما عن الماضي والآخر عن المستقبل، مثل أن يقول زوجني فيقول زوجتك

The marriage [contract] is concluded with [an] offer and acceptance, by [using] two statements which express the past [tense],[787] or one of the two [statements] expresses the past [tense] and the other [expresses] the future [tense], for example, one says, "Marry [her to] me,"[788] and [the other] says, "I have married [her to] you."

ولا ينقعد نكاح المسلمين إلا بحضور شاهدين حرين بالغين عاقلين مسلمين أو رجل وامرأتين، عدولا كانوا أو غير عدول، أو محدودين في قذف

The marriage of Muslims is not concluded except in the presence of two male witnesses [who are] free, major, sane Muslims, or one man and two women, be they upright or not, or [whether] they have been punished [a *ḥadd* punishment] for *qadhf* (wrongful imputation of unlawful sexual intercourse).

فإن تزوج مسلمٌ ذمية بشهادة ذميين جاز عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى: لا يجوز إلا أن يشهد شاهدين مسلمين

If a Muslim male marries a woman of the People of the Book living under Muslim governance (*dhimmīyyah*) with the witnessing [made] by two of the People of the Book living under Muslim governance (*dhimmīs),* it is permitted, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that [the

marriage] is not permitted unless one makes two male Muslim witnesses.

Prohibited Categories of Women

ولا يحل للرجل أن يتزوج بأمه، ولا بجداته من قبل الرجال
والنساء، ولا ببنته، ولا ببنت ولده وإن سفلت، ولا بأخته، ولا
ببنات أخته، ولا بعمته، ولا بخالته، ولا ببنات أخيه، ولا بأم امرأته
التي دخل بابنتها أو لم يدخل، ولا بابنة امرأته التي دخل بها سواء
كانت في حجره أو في حجر غيره، ولا بامرأة أبيه و لا أجداده،
ولا بامرأة ابنه ولا بني أولاده، ولا بأمه من الرضاعة، ولا بأخته من
الرضاعة

It is not lawful for a man to marry his:

1. Mother,
2. His paternal and maternal grandmothers,
3. His daughter,
4. The daughter of his child[789] howsoever low,
5. His sister,
6. The daughters of his sister,[790]
7. His paternal aunt,
8. His maternal aunt,
9. The daughters of his brother,[791]
10. The mother of his wife, with whose daughter he has had sexual intercourse or not had sexual intercourse,[792]
11. The daughter of his wife with whom he has had sexual intercourse – be the daughter under his guardianship or under the guardianship of someone else,
12. The wife of his father,
13. [The wives] of his grandfathers,
14. The wife of his son,
15. [The wives] of his grandsons,
16. His foster mother [who breastfed him], nor
17. His foster sister.

ولا يجمع بين الأختين بنكاح ولا بملك يمين وطئا، ولا يجمع بين المرأة
وعمتها أوخالتها ولا ابنة أختها ولا ابنة أخيها، ولا يجمع بين امرأتين
لو كانت كل واحدة منهما رجلا لم يجز له أن يتزوج بالأخرى

One is not to combine two sisters by marriage, nor in sexual intercourse by lawful ownership.[793]

One is not to combine a woman with her paternal aunt, maternal aunt, the daughter of her sister or the daughter of her brother.

One is not to combine two women in such a way that if either of the two was a man, it would not be permitted for him to marry the other.[794]

ولا بأس أن يجمع بين امرأة وابنة زوج كان لها من قبل

There is no objection for someone to combine a woman with the daughter of a husband she had before.[795]

ومن زنى بامرأة حرمت عليه أمها وابنتها

Whoever commits unlawful sexual intercourse (*zinā*) with a woman, her mother and her daughter are forbidden to him [in marriage].

و إذا طلق الرجل امرأته طلاقا بائنا لم يجز له أن يتزوج بأختها
حتى تنقضي عدتها

When a man divorces his wife [with] a final divorce (*ṭalāq bā'in*),[796,797] he is not permitted to marry her sister until her waiting period (*'iddah*) elapses.

ولا يجوز للمولى أن يتزوج أمته ولا المرأة عبدها

It is not permitted for a master to marry his [own] slave-woman, nor for a free woman [to marry] her [own] slave.[798]

Marriage to Non-Muslim Women

ويجوز تزويج الكتابيات، ولا يجوز تزويج المجوسيات ولا
الوثنيات

Marriage to women of the People of the Book (*kitābīyāt*) is allowed, but

marriage to Magian[799] women is not permitted, nor [is marriage permitted] to idol-worshipping women.

ويجوز تزويج الصابيات إن كانوا يؤمنون بنبي ويقرون بكتاب، وإن كانوا يعبدون الكواكب ولا كتاب لهم لم تجز مناكحتهم

Marriage to Sabian[800] women is permitted if they believe in a prophet and they recognise a [divinely revealed] book. If, however, they worship the stars and they have no [divinely revealed] book, [then] marriage to them is not permitted.

ويجوز للمحرم والمحرمة أن يتزوجا في حالة الإحرام

It is permitted for men and women in *iḥrām* to marry[801] whilst in the state of *iḥrām.*

Virgins (*Bikr*) and Previously-Married Women who had Consummated Their Marriages (*Thayyib*)

وينعقد نكاح المرأة الحرة البالغة العاقلة برضاها وإن لم يعقد عليها ولي عند أبي حنيفة رحمه الله تعالى، بكرا كانت أو ثيبا، وقالا رحمهما الله تعالى: لا ينعقد إلا بإذن ولي

The marriage of a free, major, sane woman is concluded with her consent, even though a guardian does not conclude it [for her], according to Abū Ḥanīfah, may Allah have mercy on him, be she a virgin (*bikr*) or a previously-married woman who had consummated her marriage (*thayyib),* but they,[802] may Allah have mercy on them, said that it is not concluded [in either case] except with the permission of a guardian.

ولا يجوز للولي إجبار البكر البالغة العاقلة، وإذا استأذنها الولي فسكتت أو ضحكت أو بكت بغير صوت فذلك إذن منها، وإن أبت لم يزوجها

It is not permitted for the guardian to compel a sane, major virgin [to marry]. When the guardian seeks her permission [for marriage], and she

remains silent, giggles or cries without [making] a sound, then that is [deemed] permission from her, but if she refuses, then he should not give her in marriage.

و إذا استأذن الثيب فلا بد من رضاها بالقول

When someone seeks permission from a previously-married woman who had consummated her marriage, then she must give her consent by speaking.

و إذا زالت بكارتها بوثبةٍ أو حيضةٍ أو جراحةٍ أو تعنيس فهي في حكم الأبكار

When her virginity is lost due to jumping, menstruation, a wound or due to a long period of waiting, then she is [still] under the ruling of being a virgin.

و إن زالت بكارتها بالزنا فهي كذلك عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: هي في حكم الثيب

If her virginity is lost due to unlawful sexual intercourse (*zinā)*, then she is just like that [a virgin], according to Abū Ḥanīfah, may Allah have mercy on him, but they,[803] may Allah have mercy on them, said that she comes under the ruling of the previously-married woman who had consummated her marriage.

و إذا قال الزوج للبكر: بلغك النكاح فسكتِّ، وقالت: بل رددت، فالقول قولها ولا يمين عليها، ولا يستحلف في النكاح عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يستحلف فيه

When a husband says to a virgin, "The [proposal of] marriage reached you and you remained silent," and she replies, "No, on the contrary, I rejected [the proposal]," then the [decisive] statement is her statement and there is no oath [to take] from her. An oath is not taken about marriage, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[804] may Allah have mercy on them, said that an oath is taken about it.

وينعقد النكاح بلفظ النكاح والتزويج والتمليك والهبة والصدقة

The marriage contract (*nikāḥ*) is concluded with the words: *nikāḥ* (marriage contract), *tazwīj* (marriage), *tamlīk* (ownership), *hibah* (gift) and *ṣadaqah* (charity).

ولا ينعقد بلفظ الإجارة والإعارة والإباحة

It is not concluded with the words: *ijārah* (lease), *i'ārah* (loan) or *ibāḥah* (permissibility).

ويجوز نكاح الصغير والصغيرة إذا زوجهما الولي، بكرا كانت الصغيرة أو ثيبا

The marriage of a minor boy and [of] a minor girl is permitted when the guardian gives them in marriage, be the minor girl a virgin or a previously-married woman who had consummated her marriage.

Guardian (*Walī*)

والولي هو العصبة

The guardian [in marriage] is [of the] consanguine relatives (*'aṣabah).*[805]

فإن زوجهما الأب أو الجد فلا خيار لهما بعد البلوغ، وإن زوجهما غير الأب والجد فلكل واحد منهما الخيار: إن شاء أقام على النكاح، وإن شاء فسخ

If the father, or grandfather, marries them off, then there is no option for them after attaining the age of majority, but if someone other than the father or the grandfather marries them off, then each one of the two has an option:

1. If he/she wants, he/she may remain in the marriage, or
2. If he/she wants, he/she may repudiate [it].

ولا ولاية لعبدٍ، ولا لصغير، ولا لمجنون، ولا لكافر على مسلمة

There is no [right of] guardianship for a slave, minor, the insane nor for the non-Muslim (*kāfir*) over a Muslim woman.[806]

وقال أبو حنيفة رحمه الله تعالى: يجوز لغير العصبات من الأقارب التزويج، مثل الأخت والأم والخالة

Abū Ḥanīfah, may Allah have mercy on him, said that it is permitted for people other than male relatives to give away in marriage, such as a sister, mother and maternal aunt.[807]

ومن لا ولي لها إذا زوجها مولاها الذي أعتقها جاز

Whichever [previously enslaved] woman has no guardian, if the master who set her free gives her away in marriage, [then] that is allowed.

و إذا غاب الولي الأقرب غيبة منقطعة جاز لمن هو أبعد منه أن يزوجها

When the most closely-related guardian is absent in disconnected absence, it is permitted for whomever is more remote than him [and next in proximity] as a relation, to give her away in marriage.

والغيبة المنقطعة: أن يكون في بلد لا تصل إليه القوافل في السنة إلا مرة واحدة

Disconnected absence (*ghaybah munqaṭi'ah*) is when one is in a city which convoys do not reach except [only] once a year.

Suitability (*Kafā'ah*)

والكفاءة في النكاح معتبرة، فإذا تزوجت المرأة بغير كفؤ فللأولياء أن يفرقوا بينهما

Suitability in marriage is to be reckoned with. Thus, if a woman marries someone without equal status [to her], the guardians may seek separation between the two.

والكفاءة تعتبر في النسب والدين والمال، وهو: أن يكون مالكاً للمهر والنفقة، وتعتبر في الصنائع

Suitability is taken into account [with regards to] lineage, religion and wealth – and that is, that he possess the dowry (*mahr*) and financial maintenance (*nafaqah);* and it is also taken into account [with regards to] skills.[808]

و إذا تزوجت المرأة ونقصت من مهر مثلها فللأولياء الاعتراض عليها عند أبي حنيفة رحمه الله تعالى حتى يتم لها مهر مثلها أو يفرقها

When a woman marries and she reduces [something] from the customary dowry [a woman of her standing would receive] (*mahr al-mithl),* then the guardians may oppose her, according to Abū Ḥanīfah, may Allah have mercy on him, until the customary dowry [a woman of her standing would receive] (*mahr al-mithl*) is given to her complete, or [the husband] is separated from her.

و إذا زوج الأب ابنته الصغيرة ونقص من مهر مثلها أو ابنه الصغير وزاد في مهر امرأته جاز ذلك عليهما، ولا يجوز ذلك لغير الأب والجد

When a father gives his minor daughter in marriage and he reduces [something] from the customary dowry [a woman of her standing would receive] (*mahr al-mithl),* or he marries off his minor son and [that son] increases [the amount] in the dowry of his wife, then that is permitted for both of them. That is not allowed for anyone other than the father and the grandfather.

ويصح النكاح إذا سمى فيه مهرا، ويصح وإن لم يسم فيه مهرا

The marriage contract is valid when the dowry is mentioned in it, and it is [also] valid even if the dowry is not mentioned in it.

Dowry (*Mahr*)

وأقل المهر عشرة دراهم، فإن سمى أقل من عشرة فلها العشرة

The minimum [amount] of dowry is ten dirhams. So, if someone specifies less than ten [dirhams], she has ten [dirhams].[809]

ومن سمى مهرا عشرة فما زاد فعليه المسمى إن دخل بها أو مات عنها، فإن طلقها قبل الدخول والخلوة فلها نصف المسمى

Whoever specifies the dowry as ten [dirhams] or more, then whatever has been mentioned is due upon him if he consummates the marriage[810] or if he dies leaving her [as his widow]. If, however, he divorces her prior to the consummation of the marriage, or [before] seclusion[811] [with her], then she is entitled to a half of what was mentioned [as dowry].

و إن تزوجها ولم يسم لها مهرا أو تزوجها على أن لا مهر لها فلها مهر مثلها إن دخل بها أو مات عنها، و إن طلقها قبل الدخول بها والخلوة فلها المتعة وهي ثلاثة أثواب من كسوة مثلها، و هي : درع و خمار و ملحفة

If he marries her without specifying the [amount of] dowry for her, or he marries her on [the condition] that there is no dowry for her, then she is entitled to the customary dowry [a woman of her standing would receive] if he had consummated the marriage or died leaving her [as his widow]. If, however, he divorces her prior to having sexual intercourse with her, or [adopting] seclusion [with her], then she is entitled to a gift of consolation (*mut‘ah),* and that is three garments according to the attire [a woman of her standing would wear], and they are:

1. A shirt,
2. A head-covering, and
3. A large outer wrapper.

و إن تزوجها المسلم على خمر أو خنزير فالنكاح جائز ولها مهر مثلها

If a Muslim marries her for wine or swine, the marriage contract is permitted, but she is entitled to the customary dowry [a woman of her standing would receive].

و إن تزوجها ولم يسم لها مهرا ثم تراضيا على تسمية مهر فهو لها إن دخل بها أو مات عنها، و إن طلقها قبل الدخول بها والخلوة فلها المتعة

If he marries her without specifying any dowry, and then both of them agree upon fixing the dowry, that is hers if he consummates the marriage or

dies leaving her [as his widow]. If, however, he divorces her prior to sexual intercourse or [adopting] seclusion with her, then she is entitled [only] to a gift of consolation (*mut'ah).*

و إن زادها في المهر بعد العقد لزمته الزيادة إن دخل بها أو مات عنها، وتسقط الزيادة بالطلاق قبل الدخول

If someone increases the [amount of] dowry after the conclusion [of the marriage contract], the increment is binding upon him if he consummates the marriage or dies leaving her [as his widow]. The increment lapses due to divorce prior to sexual intercourse.

فإن حطت من مهرها صح الحط

If she reduces some of the dowry, the reduction is valid.

و إذا خلا الزوج بامرأته وليس هناك مانع من الوطئ ثم طلقها فلها كمال مهرها

When the husband is secluded with his wife and there is nothing to prevent sexual intercourse, and then he divorces her, she is entitled to her full dowry [and the waiting period (*'iddah*) is due upon her].

و إن كان أحدهما مريضا أو صائما في رمضان أو محرما بحج أو عمرة أو كانت حائضا فليست بخلوة صحيحة، ولو طلقها فيجب نصف المهر

If either of the two are:

1. Ill,
2. Fasting during Ramadan,
3. In iḥrām for ḥajj or 'umrah, or
4. She is menstruating,

then it is not a valid seclusion.[812] If he were to divorce her, then a half of the dowry is required.

و إذا خلا المجبوب بامرأته ثم طلقها فلها كمال المهر عند أبي حنيفة رحمه الله تعالى

When a man whose genitals are amputated (*majbūb*) secludes himself

with his wife, and then divorces her, she is entitled to the full dowry, according to Abū Ḥanīfah, may Allah have mercy on him.

وتستحب المتعة لكل مطلقة إلا لمطلقة واحدة، وهي: التي
طلقها قبل الدخول ولم يسم لها مهرا

A gift of consolation (*mut'ah*) is recommended for every divorcée (*muṭallaqah)*, except for one type of divorcée, and that is she whom someone divorces prior to consummation [of the marriage] without specifying the [amount of] her dowry.[813]

وإذا زوج الرجل ابنته على أن يزوجه الرجل أخته أو بنته
ليكون أحد العقدين عوضاً عن الآخر فالعقدان جائزان، ولكل
واحدة منهما مهر مثلها

When a man marries off his daughter on [the condition] that the [other] man will marry his sister or his daughter to him, so that one of the contracts [of marriage] becomes a consideration for the other [contract], then both contracts are valid, and each of the two [brides] is entitled to the customary dowry [a woman of her standing would receive].

وإن تزوج حرٌ امرأةً على خدمته سنة أو على تعليم القرآن جاز
فلها مهر مثلها

It is permitted if a free man marries a woman on the condition of his service [to her] for a year, or on the condition of teaching the Qur'ān [to her], and she is [still] entitled to the customary dowry [a woman of her standing would receive].

وإن تزوج عبدٌ امرأة حرةً بإذن مولاه على خدمته سنة جاز،
ولها خدمته

It is valid if a slave, with the permission of his master, marries a free woman on the condition of his service [to her] for a year, and thus, she is entitled to that service [from him].

و إذا اجتمع في المجنونة أبوها وابنها فالولي في نكاحها ابنها عند
أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله
تعالى : أبوها

When, in [the case of an] insane woman, her father and her son are both present, then the guardian for her marriage contract is her son, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that [the guardian is] her father.

ولا يجوز نكاح العبد والأمة إلا بإذن مولاهما

The marriage contract of a slave or a slave-woman is not allowed except with the permission of her master.

و إذا تزوج العبد بإذن مولاه فالمهر دين في رقبته يباع فيه

When a slave marries with the permission of his master, then the dowry is a debt upon him for which he [may be] sold.[814]

و إذا زوج المولى أمته فليس عليه أن يبوئها بيتا للزوج، ولكنها
تخدم المولى، ويقال للزوج: متى ظفرت بها وطئتها

When a master gives away his slave-woman in marriage, he is not liable to lodge her in a house for the husband and she shall continue to serve her master. It is said to the husband, “Whenever you find [an opportunity] with her, you may have sexual intercourse with her.”

و إن تزوج امرأةً على ألف درهم على أن لا يخرجها من البلد، أو
على أن لا يتزوج عليها امرأة، فإن وفى بالشرط فلها المسمى، و إن
تزوج عليها أو أخرجها من البلد فلها مهر مثلها

If someone marries a woman for a thousand dirhams on the condition that he will not take her out of the city, or on the condition that he will not marry another woman [during their marriage], and then, if he fulfils the condition, she is entitled to the specified [dowry]. [But] if he does marry [during their marriage], or [if he] does take her out of the city, then she is entitled to the customary dowry [a woman of her standing would receive].

وإن تزوجها على حيوان غير موصوف صحت التسمية، ولها الوسط منه، والزوج مخير: إن شاء أعطاها ذلك، وإن شاء أعطاها قيمته

If someone marries her for an unspecified animal,[815] the nomination [of the unspecified animal] is valid and she is entitled to an average [animal] within that [category], and the husband has an option:

1. If he wants, he may give her that, or
2. If he wants, he may give her its value.

ولو تزوجها على ثوب غير موصوف فلها مهر مثلها

If he marries her for an unspecified garment, then she is entitled to the customary dowry [a woman of her standing would receive].

ونكاح المتعة و المؤقت باطل

Temporary marriage (*mut'ah*)[816] and marriage of a set duration (*muwaqqat*)[817] are void.

وتزويج العبد والأمة بغير إذن مولاهما موقوف: فإن أجازه المولى جاز، وإن رده بطل

The marrying off of a slave and slave-woman without the permission of their master is suspended:

1. If the master permits it, it is valid, and
2. If he refuses it, it is void.

وكذلك إن زوج رجل امرأة بغير رضاها أو رجلا بغير رضاه

Likewise, if a man marries off a woman or a man, without their consent [the marriage is suspended].[818]

ويجوز لابن العم أن يزوج بنت عمه من نفسه

It is permitted for the son of the paternal uncle to marry the [minor] daughter of his paternal uncle to himself.[819]

وإذا أذنت المرأة للرجل أن يزوجها من نفسه فعقد بحضرة شاهدين جاز

When a woman authorises a man to marry her to himself, and he concludes [it] in the presence of two male witnesses, it is valid.

وإذا ضمن الولي المهر للمرأة صح ضمانه، وللمرأة الخيار في مطالبة زوجها أو وليها

When the guardian takes responsibility of the dowry for the woman, his [taking] responsibility is valid, and the woman has the option of demanding [the dowry] from her husband or [from] her guardian.[820]

وإذا فرق القاضي بين الزوجين في النكاح الفاسد قبل الدخول فلا مهر لها، وكذلك بعد الخلوة

When the judge orders the separation of the husband and the wife in an invalid marriage prior to consummation, and likewise, after seclusion, then she is not entitled to any dowry.

وإذا دخل بها فلها مهر مثلها لا يزاد على المسمى، وعليها العدة، ويثبت نسب ولدها منه

And if he has had sexual intercourse with her, then she is entitled to the customary dowry [a woman of her standing would receive] which does not exceed the specified [dowry], she is liable to the waiting period (*‘iddah*),[821] and the lineage of her child [born of that wedlock] is established [as being] from him.

ومهر مثلها يعتبر بأخواتها وعماتها وبنات عمها، ولا يعتبر بأمها وخالتها إذا لم تكونا من قبيلتها

The customary dowry [a woman of her standing would receive] is determined by [the dowry of] her sisters, her paternal aunts and the daughters of her paternal uncle,[822] and it is not determined by [the dowry of] her mother and her maternal aunt, if they are not from her tribe.[823]

ويعتبر في مهر المثل: أن تتساوى المرأتان في السن، والجمال، والمال، والعقل، والدين، والبلد، والعصر

For the customary dowry [a woman of her standing would receive], it is taken into account whether the two women are equal in terms of age, beauty,

wealth, intellect, religion, lineage, land and epoch.[824]

Miscellaneous Issues Pertaining to Marriage

ويجوز تزويج الأمة مسلمة كانت أو كتابية

It is permitted to marry a slave-woman, whether she is a *Muslimah* or a woman of the People of the Book (*kitābiyyah).*

ولا يجوز أن يتزوج أمةً على حرة، ويجوز تزويج الحرة عليها

It is not permitted to marry a slave-woman in addition to [the existing marriage to] a free woman,[825] but it is permitted to marry a free woman with her.[826]

وللحر أن يتزوج أربعا من الحرائر والإماء، وليس له أن يتزوج أكثر من ذلك

The free man is allowed to marry four free women and slave-women, but he is not permitted to marry more than that.[827]

ولا يتزوج العبد أكثر من اثنتين

The slave is not allowed to marry more than two women [at any one time].

فإن طلق الحر إحدى الأربع طلاقا بائنا لم يجز له أن يتزوج رابعة حتى تنقضي عدتها

If the free man divorces one of the four [wives] with a final divorce, it is not permitted for him to marry [another] fourth [wife] until [the divorcée] completes her waiting period (*'iddah).*

وإذا زوج الأمة مولاها ثم أعتقت فلها الخيار، حرا كان زوجها أو عبدا، وكذلك المكاتبة

When a slave-woman is married away by her master [and] then is set free, she has an option,[828] irrespective of whether her husband is a free man or a slave, and likewise [is the case with] the slave-woman who has contracted to purchase her freedom (*mukātabah).*

وإن تزوجت أمة بغير إذن مولاها ثم أعتقت صح النكاح ولا خيار لها

If a slave-woman gets married without the permission of her master, [and] then she is set free, the marriage contract is valid and she has no option.[829]

ومن تزوج امرأتين في عقدة واحدة إحداهما لا يحل له نكاحها صح نكاح التي يحل له نكاحها وبطل نكاح الأخرى

Whoever marries two women in a single contract [of marriage], such that one of the two women is not lawful for him [to marry], then the marriage with the one whose marriage is lawful for him is valid and the marriage with the other [woman] is void.

وإذا كان بالزوجة عيب فلا خيار لزوجها

When the wife has a blemish, her husband has no option.[830]

وإذا كان بالزوج جنونٌ أو جذامٌ أو برصٌ فلا خيار للمرأة عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى: لها الخيار

When the husband is [afflicted] with insanity, leprosy or leucoderma, then the wife has no option [to discontinue the marriage], according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that she does have the option.

وإذا كان الزوج عنينا أجله الحاكم حولا، فإن وصل في هذه المدة فلا خيار لها وإلا فرق بينهما إن طلبت المرأة ذلك

When the husband is impotent, the *ḥākim* issues him a deadline of a year. Then, if he gains [potency] within this period, she has no option [of discontinuing the marriage]; otherwise [the *ḥākim]* is to declare separation between them, if the wife demands that.

والفرقة تطليقة بائنة، ولها كمال المهر إن كان قد خلا بها

[This] separation is a final divorce,[831] and she is entitled to the full dowry if [the husband] had been in seclusion with her.

و إن كان مجبوبا فرق القاضي بينهما في الحال ولم يؤجله، والخصي يؤجل كما يؤجل العنين

If his genitals are amputated (*majbūb)*, the judge declares separation between the two immediately, and he does not allow [the husband] any time [to disprove the amputation]. The castrated [husband] will be given a deadline, in the same way the impotent [husband] is given a deadline.

و إذا أسلمت المرأة وزوجها كافر عرض عليه القاضي الإسلام، فإن أسلم فهي امرأته، و إن أبى عن الإسلام فرق بينهما، وكان ذلك طلاقا بائنا عند أبي حنيفة ومحمد رحمهما الله تعالى، وقال أبو يوسف رحمه الله تعالى: هي الفرقة بغير طلاق

When a woman accepts Islam and her husband [remains] a disbeliever, the judge offers him [to embrace] Islam. Then, if he accepts Islam, then she remains his wife, but if he refuses Islam, [the judge] declares separation between the two, and that is a final divorce, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, but Abū Yūsuf, may Allah have mercy on him, said that it is a separation without divorce.

و إن أسلم الزوج وتحته مجوسية عرض عليها الإسلام، فإن أسلمت فهي امرأته، و إن أبت فرق القاضي بينهما، ولم تكن الفرقة طلاقا

If the husband accepts Islam while married to a Magian woman, he offers Islam to her. Then, if she accepts Islam she remains his wife, but if she refuses, the judge declares separation between the two, and the separation does not amount to divorce.

فإن كان قد دخل بها فلها كمال المهر، و إن لم يكن دخل بها فلا مهر لها

If [the husband] had consummated the marriage with her, she is entitled to the full dowry, but if he had not consummated the marriage, there is no dowry for her.

وإذا أسلمت المرأة في دار الحرب لم تقع الفرقة عليها حتى تحيض
ثلاث حيض

When a woman accepts Islam in enemy territory, her separation does not take place until she has menstruated three periods.[832]

فإذا حاضت بانت من زوجها

When she has menstruated [thrice], she becomes finally divorced (*bā'inah*) from her husband.[833]

وإذا أسلم زوج الكتابية فهما على نكاحهما

When the husband of a woman of the People of the Book (*kitābiyyah*) accepts Islam, they [remain] married.

وإذا خرج أحد الزوجين إلينا من دار الحرب مسلما وقعت
البينونة بينهما

When one of the spouses comes over to us [Muslims] from enemy territory as a Muslim, then separation by divorce (*baynūnah*) occurs between the two.

وإن سبي أحدهما وقعت البينونة بينهما، وإن سبيا معا لم تقع
البينونة

If either of the two is taken prisoner-of-war, then separation by divorce takes place between the two, but if both of them are taken prisoners-of-war together, then separation by divorce does not take place.

وإذا خرجت المرأة إلينا مهاجرة جاز لها أن تتزوج في الحال،
فلا عدة عليها عند أبي حنيفة رحمه الله تعالى، فإن كانت حاملا
لم تتزوج حتى تضع حملها

When a woman comes over to us [Muslims] as an emigrant, it is permitted for her to marry immediately, and according to Abū Ḥanīfah, may Allah have mercy on him, there is no waiting period (*'iddah*) upon her, but if she is pregnant, then she is not to marry until she gives birth.

و إذا ارتد أحد الزوجين عن الإسلام وقعت البينونة بينهما
وكانت الفرقة بينهما بغير طلاق

When one of the spouses leaves Islam as an apostate, then separation takes place between the two, and the separation between them will be without divorce.

فإن كان الزوج هو المرتد وقد دخل بها فلها كمال المهر، و إن لم
يدخل بها فلها نصف المهر

If it was the husband who became apostate, and he had consummated the marriage with her, then she is entitled to the full dowry, but if he had not consummated marriage with her, then she is entitled to half the dowry.

و إن كانت المرأة هي المرتدة فإن كان قبل الدخول فلا مهر لها،
و إن كانت الردة بعد الدخول فلها المهر

If it is she who became apostate, and if [the apostasy] was before consummation of the marriage, then there is no dowry for her, but if the apostasy took place after consummation of the marriage, then she is entitled to the full dowry.

و إن ارتدا معا وأسلما فهما على نكاحهما

If both [of the spouses] become apostates together, then later accepted Islam together, they remain married.

ولا يجوز أن يتزوج المرتد مسلمة ولا مرتدة ولا كافرة، وكذلك
المرتدة لا يتزوجها مسلم ولا كافر ولا مرتد

It is not allowed for an apostate man to marry a Muslim woman, an apostate woman or a disbelieving woman,[834] and likewise for an apostate woman, neither is a Muslim man to marry her, nor a disbeliever nor an apostate man.

و إذا كان أحد الزوجين مسلما فالولد على دينه، وكذلك إن أسلم
أحدهما وله ولد صغير صار ولده مسلما بإسلامه

When either of the spouses is a Muslim, then the child is on their

religion,[835] and likewise, if either of the two accepts Islam and has a minor child, their child becomes Muslim due to their conversion to Islam.

وإن كان أحد الأبوين كتابيا والآخر مجوسيا فالولد كتابيٌّ

If one of the parents is one of the People of the Book and the other is a Magian, the child is [also] one of the People of the Book.[836]

وإذا تزوج الكافر بغير شهود أو في عدة كافر وذلك في دينهم جائزٌ ثم أسلما أقرا عليه

When a disbeliever marries without witnesses, or during the waiting period (*'iddah*) of a disbeliever, and that is permitted in his religion, then later both of them convert to Islam, they remain married.[837]

وإن تزوج المجوسي أمه أو ابنته ثم أسلما فرق بينهما

If a Magian marries his mother or his daughter, then later, both of them become Muslims, they are separated.[838]

وإن كانت للرجل امرأتان حرتان فعليه أن يعدل بينهما في القسم، بكرين كانتا أو ثيبين أو إحداهما بكرا والأخرى ثيبا

If a man has two wives who are free women, then he ought to deal justly with both of them in the apportioning [of time], whether both of them were virgins or women who had been previously married, or if one of the two is a virgin and the other is a previously-married woman.

وإن كانت إحداهما حرة والأخرى أمة فللحرة الثلثان وللأمة الثلث

If one of the two is a free woman and the other is a slave-woman, then the free woman is entitled to two-thirds [of the time] and the slave-woman is entitled to a third.

ولا حق لهن في القسم في حالة السفر

They have no right to the apportionment [of time and provision] during the state of travel.[839]

و يسافر الزوج بمن شاء منهن، والأولى أن يقرع بينهن فيسافر بمن خرجت قرعتها

The husband may travel with whomsoever of them he wishes, and it is better that he draw lots between them and travel with the one whose lot emerges.

و إذا رضيت إحدى الزوجات بترك قسمها لصاحبتها جاز ولها أن ترجع في ذلك

If one of the wives consents to relinquish her [right of] distribution [of time] in favour of another wife it is permitted, and she has a right to retract that [consent].

كتاب الرضاع

RAḌĀʿ – SUCKLING

قليل الرضاع وكثيره إذا حصل في مدة الرضاع تعلق به التحريم

A little suckling or a lot, if it occurs during the period of breastfeeding, prohibition [of marriage of children suckled by the same woman] is attached to it.[840]

ومدة الرضاع عند أبي حنيفة رحمه الله تعالى ثلاثون شهرا،
وعندهما رحمهما الله تعالى: سنتان

According to Abū Ḥanīfah, may Allah have mercy on him, the period for suckling is thirty months,[841] whereas according to them,[842] may Allah have mercy on them, it is two years.[843]

و إذا مضت مدة الرضاع لم يتعلق بالرضاع التحريم

When the period for suckling elapses, the ruling of prohibition is not attached to the suckling.[844]

ويحرم من الرضاع ما يحرم من النسب، إلا أم أخته من الرضاع،
فإنه يجوز له أن يتزوجها، ولا يجوز أن يتزوج أم أخته من النسب،
وأخت ابنه من الرضاع يجوز أن يتزوجها ولا يجوز أن يتزوج
أخت ابنه من النسب

Every [person] becomes prohibited [for marriage] due to suckling, who is prohibited due to lineage,[845] except the mother of his sister through suckling, for it is permitted for him to marry her, but it is not permitted for him to marry the mother of his biological sister, and the sister of his son-through-suckling, it is permitted for him to marry her, but it is not permitted for him to marry the sister of his biological son.

ولا يجوز أن يتزوج امرأة ابنه من الرضاع كما لا يجوز أن يتزوج امرأة ابنه من السب

It is not permitted for someone to marry the wife of his son-through-suckling, just as it is not permitted for him to marry the wife of his biological son.

ولبن الفحل يتعلق به التحريم، وهو: أن ترضع المرأة صبية فتحرم هذه الصبية على زوجها وعلى آبائه وأبنائه، ويصير الزوج الذي نزل لها منه اللبن أبا للمرضعة

Prohibition is [also] attached to the milk engendered by the one who sires the woman's children (*laban al-faḥl*), which is when a woman nurses a female infant, then this female infant becomes prohibited to the husband [of the feeding woman], to his fathers and his sons, and the husband, due to whom milk had come [into her breasts, himself] becomes a father to the female nursling.[846]

ويجوز أن يتزوج الرجل بأخت أخيه من الرضاع، كما يجوز أن يتزوج بأخت أخيه من النسب، وذلك مثل الأخ من الأب إذا كان له أخت من أمه جاز لأخيه من أبيه أن يتزوجها

It is permitted for a man to marry the sister of his brother-through-suckling, just as it is permitted for him to marry the sister of his biological brother,[847] and that is the same as the brother from the father's side when he[848] has a sister from his mother's side, it is permissible for his brother from the father's side to marry her.[849]

وكل صبيين اجتمعا على ثدي واحدٍ لم يجز لأحدهما أن يتزوج بالآخر

Every two infants who came together on the breast of one woman[850] are neither of them permitted to marry the other.[851]

ولا يجوز أن تتزوج المرضعة أحدا من ولد التي أرضعت

It is not permitted for the woman who has been suckled to marry any male

child of the woman who suckled her.[852]

ولا يتزوج الصبي المرضع أخت زوج المرضعة لأنها عمته من الرضاع

The male who has been suckled is not to marry the sister of the husband of the woman who nursed him, because she is his paternal foster aunt [by milk relationship].

و إذا اختلط اللبن بالماء واللبن هو الغالب يتعلق به التحريم، فإن غلب الماء لم يتعلق به التحريم

When the milk mixes with water and the milk is predominant, prohibition is attached to it, but if the water is predominant, [then] prohibition is not attached to it.[853]

و إذا اختلط بالطعام لم يتعلق به التحريم، و إن كان اللبن غالبا عند أبي حنيفة رحمه الله تعالى، و قالا رحمهما الله تعالى: يتعلق به التحريم

When [the milk] mixes with food, prohibition is not attached to it, even though the milk is predominant, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[854] may Allah have mercy on them, said that prohibition is attached to it.

و إذا اختلط بالدواء و اللبن غالب تعلق به التحريم

When it mixes with medicine and the milk is predominant, prohibition is attached to it.

و إذا حلب اللبن من المرأة بعد موتها فأوجر به الصبي تعلق به التحريم

When milk is extracted from a woman after her death and it is dripped into [the throat of] the child, prohibition is attached to it.[855]

و إذا اختلط لبن المرأة بلبن شاة ولبن المرأة هو الغالب تعلق به التحريم، و إن غلب لبن الشاة لم يتعلق به التحريم

When the milk of a woman mixes with sheep or goat's milk and the milk of the woman is predominant, then prohibition is attached to it, but if the sheep or goat's milk is predominant, then prohibition is not attached to it.

وإذا اختلط لبن امرأتين يتعلق التحريم بأكثرهما عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى: تعلق بهما التحريم

When the milk of two women mixes, prohibition is attached to the one of the two whose [milk] was more, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them. Muḥammad, may Allah have mercy on him, however, said that prohibition is attached to both [of them].[856]

وإذا نزل للبكر لبن فأرضعت صبيا يتعلق به التحريم

When milk is produced by a virgin and she nurses an infant, then prohibition is attached to it.

وإذا نزل للرجل لبن فأرضع به صبيا لم يتعلق به التحريم

When milk is produced by a man and he feeds it to an infant, prohibition is not attached to it.[857]

وإذا شرب صبيان من لبن شاة فلا رضاع بينهما

When two infants drink from the milk of one [and the same] sheep or goat, there is no suckling [relationship] between them.[858]

وإذا تزوج الرجل صغيرة وكبيرة فأرضعت الكبيرة الصغيرة حرمتا على الزوج

When a man marries a minor girl[859] and an adult woman, and the adult woman breastfeeds the minor girl [after the marriage], both are prohibited to the husband.[860]

فإن كان لم يدخل بالكبيرة فلا مهر لها، وللصغيرة نصف المهر

If he had not consummated marriage with the adult woman, she has no dowry, and the minor girl is entitled to a half of the dowry.

و يرجع به الزوج على الكبيرة إن كانت تعمدت به الفساد، و إن لم تتعمد فلا شيء عليها

The husband has recourse to the adult woman for [the return of the half dowry] if she had intended to invalidate [their marriage], but if she had not intended [the invalidation], then she is not liable for anything.

ولا تقبل في الرضاع شهادة النساء منفردات، و إنما يثبت بشهادة رجلين أو رجل وامرأتين

The testimony of women in [the case of] suckling is not accepted individually;[861] it is only reliably established with the testimony of two men, or one man and two women.

كتاب الطلاق

ṬALĀQ – DIVORCE

Kinds of Divorce

الطلاق على ثلاثة أوجه: أحسن الطلاق، وطلاق السنة، وطلاق البدعة

Divorce is of three types:

1. The best [form of] divorce (*aḥsan aṭ-ṭalāq*),
2. Sunnah form of divorce (*ṭalāq as-sunnah*),[862] and
3. Innovated divorce (ṭalāq al-bid‘ah).[863]

فأحسن الطلاق: أن يطلق الرجل امرأته تطليقة واحدة في طهر واحد لم يجامعها فيه ويتركها حتى تنقضي عدتها

The best form of divorce is for a man to divorce his wife with a single pronouncement of divorce during one period of purity (*ṭuhr*) in which he does not have sexual intercourse with her and [for him to] leave[864] her until her *‘iddah* passes.

وطلاق السنة: أن تطلق المدخول بها ثلاثا في ثلاثة أطهار

The sunnah form of divorce is that the woman whose marriage has been consummated, is divorced thrice in three [separate] periods of purity.

وطلاق البدعة: أن يطلقها ثلاثا بكلمة واحدة، أو ثلاثا في طهر واحد، فإذا فعل ذلك وقع الطلاق، وبانت امرأته منه، وكان عاصيا

The innovated form of divorce is that one divorces her thrice in one statement, or thrice in one period of purity. If he does that, the divorce takes effect and his wife becomes irrevocably divorced (*bā’inah*)[865] from him, and

he has been disobedient.[866]

والسنة في الطلاق من وجهين: سنة في الوقت، وسنة في العدد

The sunnah form of divorce is of two types:

1. Sunnah according to time, and
2. Sunnah according to the number [of pronouncements of divorce].

فالسنة في العدد يستوي فيها المدخول بها وغير المدخول بها

In the sunnah [divorce] according to the number [of pronouncements], the woman with whom marriage has been consummated and the woman with whom marriage has not been consummated are both equal.

والسنة في الوقت تثبت في حق المدخول بها خاصة، وهو: أن يطلقها واحدة في طهر لم يجامعها فيه، وغير المدخول بها أن يطلقها في حال الطهر والحيض

Sunnah according to time is established only in respect of the woman with whom marriage has been consummated, and that is when he divorces her once in the period of purity[867] in which he does not have sexual intercourse[868] with her, and [with regards to] the woman whose marriage has not been consummated, [the sunnah is] that he may divorce her in the period of purity or menstruation.

وإذا كانت المرأة لا تحيض من صغر أو كبر فأراد أن يطلقها للسنة طلقها واحدة

When the woman does not menstruate due to her minority [age] or old age, and he wants to divorce her according to the sunnah, he should divorce her once.

فإذا مضى شهر طلقها أخرى، فإذا مضى شهر طلقها أخرى

When a month passes, he divorces her again, and when a month passes [again], he divorces her another [time].

ويجوز أن يطلقها ولا يفصل بين وطئها وطلاقها بزمان

It is permitted for him to divorce her and not create a gap in time between

having sexual intercourse with her and her divorce.[869]

وطلاق الحامل يجوز عقيب الجماع، ويطلقها للسنة ثلاثا يفصل بين كل تطليقتين بشهر عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى: لا يطلقها للسنة إلا واحدة

The divorce of a pregnant woman following sexual intercourse is allowed. One should divorce her according to the sunnah, thrice, creating a gap of a month between every two pronouncements of divorce, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them. Muḥammad, may Allah have mercy on him, however, said that he should not divorce her according to the sunnah, but [only] once.

وإذا طلق الرجل امرأته في حال الحيض وقع الطلاق، ويستحب له أن يراجعها، فإذا طهرت وحاضت وطهرت فهو مخير: إن شاء طلقها، وإن شاء أمسكها

When the man divorces his wife during menstruation, the divorce is effectual. It is recommended [however] for him to take her back. Then, when she becomes pure and menstruates, and [again] becomes pure, then he has an option:

1. If he wants, he may divorce her, and
2. If he wants, he may retain her.[870]

ويقع طلاق كل زوج إذا كان عاقلا بالغا، ولا يقع طلاق الصبي والمجنون والنائم

Divorce is effectual from every husband who is sane and major, and the divorce of a minor, insane or sleeping husband does not take effect.

وإذا تزوج العبد بإذن مولاه وطلق وقع طلاقه، ولا يقع طلاق مولاه على امرأته

When a slave marries with the permission of his master and he pronounces divorce, the divorce takes effect, but the divorce [pronounced] by his master against the wife of the slave does not take effect.

والطلاق على ضربين: صريح وكناية

Divorce is of two kinds:

1. Explicit (*ṣarīḥ*), and
2. Implicit (*kināyah*).

فالصريح قوله: أنت طالق ومطلقة، وطلقتك

Explicit Divorce

Explicit [divorce] is [like] his saying:

1. "You are divorced,"
2. "… [you are] a divorced woman," and
3. "I have divorced you."

فهذا يقع به الطلاق الرجعي

Revocable divorce (*ṭalāq raj'ī*) takes effect by it.

ولا يقع به إلا واحدة وإن نوى أكثر من ذلك، ولا يفتقر بهذه الألفاظ إلى نية

Only one [divorce] takes place, even if he had intended more than that [single divorce], and with these words [of expression], an intention is not required.[871]

وقوله: أنت الطلاق، وأنت طالق الطلاق، وأنت طالق طلاقا، فإن لم تكن له نية فهي واحدة رجعية، وإن نوى اثنتين لا يقع إلا واحدة، وإن نوى به ثلاثا كان ثلاثا

His saying:

1. " *Anti aṭ-ṭalāq* – You are the [embodiment of] divorce,"
2. " *Anti ṭāliq aṭ-ṭalāq* – You are divorced with the divorce," or
3. " *Anti ṭāliqun ṭalāqan* – You are divorced with a divorce,"

then if he has no [specific] intention, then it is one revocable [divorce], but if he had intended two [pronouncements of divorce], only one takes effect. If he intended three [pronouncements of divorce] by it, [then all] three [apply].[872]

Implicit Divorce

والضرب الثاني: الكنايات، ولا يقع بها الطلاق إلا بالنية أو بدلالة حال

The second types are the implied [methods]. Divorce only takes effect by them with intention or with immediate indication.

وهي على ضربين: منها ثلاثة ألفاظ يقع بها الطلاق الرجعي ولا يقع بها إلا واحدة، وهي قوله: اعتدي، واستبرئي رحمك، وأنت واحدة

This [method of pronouncing divorce] is of two types:

A. There are three wordings for it by which revocable divorce takes place and only one [pronouncement of divorce] occurs, and that is [by] someone saying:

1. *"I'taddī* – Enter the waiting period,"
2. *"Istabri'ī raḥimaki* – Seek to keep your womb free," or
3. " *Anti wāḥidah* – You are single."

وبقية الكنايات إذا نوى بها الطلاق كانت واحدة بائنة، وإن نوى ثلاثا كانت ثلاثا

B. [With regards to] all other implied [methods],[873] when one intends divorce with them, then [only] one final [divorce takes place], but if he intends [all] three, then [all] three take effect.[874]

وإن نوى اثنتين كانت واحدة، وهذا مثل قوله: أنت بائن، وبتة، وبتلة، وحرام، وحبلك على غاربك، والحقي بأهلك، وخلية، وبرية، ووهبتك لأهلك، وسرحتك، واختاري، وفارقتك، وأنت حرة، وتقنعي، واستتري، واغربي، وابتغي الأزواج

If he intends two [pronouncements of divorce], then [only] one occurs, and that is like his saying:

1. "You are separate [from me],"
2. "Decidedly,"
3. "…severed from me,"
4. "…*ḥarām* [for me],"

5. “Your rope is on your neck,”
6. “Join your relatives,”
7. “[You are] set free,”
8. “[You are] free,”
9. “I give you to your relatives,”
10. “I abandon you,”
11. “Choose!,”
12. “I separate from you,”
13. “You are a free woman,”
14. “Veil yourself,”
15. “Cover yourself,”
16. “Become a stranger,” and
17. “Seek out husbands.”

فإن لم يكن له نية الطلاق لم يقع بهذه الألفاظ طلاق، إلا أن يكونا في مذاكرة الطلاق، فيقع بها الطلاق في القضاء، ولا يقع فيما بينه وبين الله تعالى إلا أن ينويه

Thus, if he has no intention of divorce, divorce does not take place with these wordings, unless [these two types of implied pronouncements] are [pronounced] in a discussion of divorce,[875] then divorce is established by them in a legal ruling. It does not, however, occur for what is between him and between Allah the High, unless he intends it.[876]

وإن لم يكونا في مذاكرة الطلاق وكانا في غضب أو خصومة وقع الطلاق بكل لفظة لا يقصد به السب والشتيمة

If [these two types of implied pronouncements] are not in a discussion of divorce but they are in [a state of] anger and quarrel, divorce occurs with every wording which is not meant for insult and abuse.[877]

ولم يقع بما يقصد به السب والشتيمة إلا أن ينويه

It does not occur by that with which insult and abuse are aimed, unless he intends [divorce].

و إذا وصف الطلاق بضرب من الزيادة كان بائنا، مثل أن يقول:
أنت طالق بائن، و أنت طالق أشد الطلاق، أو أفحش الطلاق، أو
طلاق الشيطان أو طلاق البدعة، أوكالجبل، وملأ البيت

When someone describes divorce with something extra, it is [one] final [divorce], as when he says:

1. "You are divorced finally,"
2. "You are divorced the most extreme [form of] divorce,"
3. "…the worst [form of] divorce,"
4. "…the divorce of Satan,"
5. "…innovated [*bid'ah*] divorce,"
6. "…like [the size of] the mountain," or
7. "…a roomful [of divorce]."

و إذا أضاف الطلاق إلى جملتها أو إلى ما يعبر به عن الجملة وقع
الطلاق مثل أن يقول: أنت طالق، أو رقبتك طالق، أو عنقك طالق،
أو روحك، أو بدنك، أو جسدك، أو فرجك، أو وجهك

When someone attaches the divorce to her entirety, or to [a part] which may be understood as [her] entirety, [then] divorce takes effect, for example that he says:

1. " *Anti ṭāliq* (You are divorced),"
2. "*Taqabatuki ṭāliq* (Your neck is divorced),"
3. "*'Unuquki ṭāliq* (Your neck is divorced),"
4. "*Tūḥuki* …(Your soul…),"
5. "*Badanuki*… (Your body…),"
6. "*Jasaduki*… (Your torso…),"
7. "*Farjuki*… (Your vagina…)," or
8. "*Wajhuki*… (Your face…)."

وكذلك إن طلق جزءا شائعا منها، مثل أن يقول: نصفك، أو
ثلثك طالق

[And] likewise, if he divorces an indivisible part[878] of her, for example

that he says:

9. “A half of you…,” or
10. “A third of you is divorced,” [then divorce takes effect].

وإن قال: يدك – أو رجلك – طالق، لم يقع الطلاق

If, however, he says:

1. “Your hand…,” or
2. “Your foot is divorced,”

[then] divorce does not take effect.

وإن طلقها نصف تطليقة أو ثلث تطليقة كانت تطليقة واحدة

If he divorces her a half of a pronouncement of divorce or a third of a pronouncement of divorce, then [that] is one [full] pronouncement of divorce.

وطلاق المكره والسكران واقع

The divorce of someone who is coerced and someone who is intoxicated takes effect.

ويقع الطلاق إذا قال نويت به الطلاق

When someone [after saying or doing something] says, “By this, I intended divorce,” the divorce is effective.

ويقع طلاق الأخرس بالإشارة

The divorce by a mute through indication takes effect.[879]

وإذا أضاف الطلاق إلى النكاح وقع عقيب النكاح، مثل أن يقول: إن تزوجتك فأنت طالق، أو قال كل امرأة أتزوجها فهي طالق

When someone attributes divorce to the marriage, it takes effect [immediately] following the marriage. For example, someone says, “If I marry you, then you are divorced,” or he says, “Every woman whom I marry, she is divorced [by me].”

و إذا أضافه إلى شرط وقع عقيب الشرط، مثل أن يقول لامرأته: إن دخلت الدار فأنت طالق

When he attaches it to a condition, it takes effect following the [fulfilment of the] condition. For example, someone says to his wife, "If you enter the house, then you are divorced."

ولا يصح إضافة الطلاق إلا أن يكون الحالف مالكا أو يضيفه إلى ملكه، فإن قال لأجنبية « إن دخلت الدار فأنت طالق» ثم تزوجها فدخلت الدار لم تطلق

The attaching of divorce [to a condition or event] is not valid unless the one taking the oath is the owner, or he attributes it to his ownership. Thus, if he says to a female non-relative, "If you enter the house then you are divorced," [and] thereafter, he marries her and she enters the house, she is not divorced.[880]

وألفاظ الشرط: إن، و إذا، و إذا ما، وكل، وكلما، ومتى، ومتى ما

The words [used] for conditions are:

1. *In* (if),
2. *Idhā* (when),
3. *Idhā-mā* (whenever),
4. *Kullu* (every/each),
5. *Kullamā* (whenever),
6. *Matā* (when),
7. *Matā-mā* (whenever).

ففي كل هذه الألفاظ إن وجد الشرط انحلت اليمين، ووقع الطلاق، إلا في كلما، فإن الطلاق يتكرر بتكرار الشرط حتى يقع ثلاث تطليقات

Thus, if a condition is found in any of these words, the oath is released and divorce takes place, except with [the word] *kullamā*, [wherein] divorce repeats with the repetition of the [fulfilment of the] condition, until [all] three pronouncements of divorce have taken place.

فإن تزوجها بعد ذلك وتكرر الشرط لم يقع شيء

If he marries her after that, and the [fulfilment of the] condition repeats, nothing takes effect.[881]

وزوال الملك بعد اليمين لا يبطلها. فإن وجد الشرط في ملك انحلت اليمين ووقع الطلاق، وإن وجد في غير الملك انحلت اليمين ولم يقع شيء

The loss of ownership after [swearing] the oath does not nullify [the oath]. Thus, if the condition is found in the ownership, the oath is fulfilled and divorce takes place,[882] but if it is found in non-ownership, the condition is fulfilled but nothing takes effect.[883]

وإذا اختلفا في وجود الشرط فالقول قول الزوج فيه، إلا أن تقيم المرأة البينة

If both [spouses] differ with regards to the existence of a condition, then the [legally decisive] statement in it is the saying of the husband, unless the woman produces evidence.

فإن كان الشرط لا يعلم إلا من جهتها فالقول قولها في حق نفسها مثل أن يقول: إن حضت فأنت طالق، فقالت: قد حضت، طلقت

If the condition cannot be known except from her side, then the [legally decisive] statement is her saying in her own favour. For example, he says, “If you menstruate, then you are divorced,” and she says, “I am menstruating,” [then] she is divorced.

وإن قال لها: إذا حضت فأنت طالق وفلانة معك، فقالت: قد حضت، طلقت هي ولم تطلق فلانة

If he says to her, “If you menstruate, then you are divorced and so-and-so [a woman] with you,” and she says, “I am menstruating,” [then] she is divorced, but so-and-so is not divorced.

و إذا قال لها: إذا حضت فأنت طالق، فرأت الدم لم يقع الطلاق حتى يستمر الدم ثلاثة أيام، فإذا تمت ثلاثة أيام حكمنا بوقوع الطلاق من حين حاضت

When he says to her, “When you menstruate, you are divorced,” and then she sees blood, the divorce does not take effect until the bleeding continues for three days. When three days are complete, we declare the effect of the divorce from the moment she began her menstrual period.

و إن قال لها: إذا حضت حيضة فأنت طالق، لم تطلق حتى تطهر من حيضها

If he says to her, “When you menstruate for one period, you are divorced,” she is not divorced until she becomes pure of her menstruation.[884]

وطلاق الأمة تطليقتان، وعدتها حيضتان حرا كان زوجها أو عبدا، وطلاق الحرة ثلاث، حرا كان زوجها أو عبدا

The [irrevocable] divorce of a slave-woman is two pronouncements of divorce, and her waiting period (*‘iddah*) is two menstrual periods, be her husband a free man or a slave, and the divorce of a free woman is three [pronouncements of divorce], be her husband a free man or a slave.

و إذا طلق الرجل امرأته قبل الدخول بها ثلاثا وقعن عليها

When a man divorces his wife with three [pronouncements of divorce] prior to consummating the marriage, they take effect on her.

و إن فرق الطلاق بانت بالأولى ولم تقع معا الثانية والثالثة

If he separates the divorce,[885] the first one is final and the second and third do not take place together.[886]

و إن قال لها أنت طالق واحدة وواحدة وقعت عليها واحدة

If he says to her, “You are divorced once and once,” only one [pronouncement of divorce] takes effect on her.

ولو قال لها أنت طالق واحدة قبل واحدة وقعت عليها واحدة

If he says to her, “You are divorced once before once,” then one

[pronouncement of divorce] takes effect on her.

و إن قال لها واحدة قبلها واحدة وقعت عليها ثنتان

If he says to her, "…once before which is one," [then] two pronouncements of divorce take effect upon her.

و إن قال واحدة بعدها واحدة وقعت واحدة

If he says to her, "…once, after which is one," [then only] one [pronouncement of divorce] takes place.

و إن قال لها أنت طالق واحدة بعد واحدة أو مع واحدة أو معها واحدة وقعت ثنتان

If he says to her, "You are divorced once after once," "…with once," or "… with that one, once," [then] two [pronouncements of divorce] take effect.

وإن قال لها: إن دخلت الدار فأنت طالق واحدة وواحدة، فدخلت الدار وقعت عليها واحدة عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: تقع ثنتان

If he says to her, "If you enter the house, then you are divorced once and once," then she enters the house, according to Abū Ḥanīfah, may Allah have mercy on him, only one [pronouncement of divorce] takes effect upon her, but they,[887] may Allah have mercy on them, said that two [pronouncements of divorce] take place.

و إن قال لها أنت طالق بمكة فهي طالق في حال في كل البلاد، وكذلك إذا قال لها أنت طالق في الدار

If he says to her, "You are divorced at Makkah," then she is divorced immediately in all lands, and likewise when he says to her, "You are divorced in the house."

و إن قال لها أنت طالق إذا دخلت مكة لم تطلق حتى تدخل مكة

If he says to her, "You are divorced when you enter Makkah," she is not [effectively] divorced until she enters Makkah.

و إن قال أنت طالق غداً وقع عليها الطلاق بطلوع الفجر الثاني

If he says, “You are divorced tomorrow,” the divorce takes effect upon her with the rising of the true dawn.

Delegation (*Tafwīḍ*) of Divorce

و إن قال لامرأته « اختاري نفسك» ينوي بذلك الطلاق، أو قال لها «طلقي نفسك» فلها أن تطلق نفسها ما دامت في مجلسها ذلك، فإن قامت منه أو أخذت في عمل آخر خرج الأمر من يدها

If he says to his wife, “Choose yourself,” and by that he intends divorce, or he says to her, “Divorce yourself,” then she may divorce herself as long as she is in that session of hers. If she stands [and moves away] from it, or she begins doing something else, the affair leaves her hands.

و إن اختارت نفسها في قوله «اختاري نفسك» كانت واحدة بائنة ولا يكون ثلاثا و إن نوى الزوج ذلك

If she chooses herself in response to his saying “Choose yourself,” then one final [pronouncement of divorce] takes place, but not three, even though the husband may have intended that.

ولا بد من ذكر النفس في كلامه أو في كلامها

It is important to mention the [word] *nafs* (self) in his statement, or in her statement.

و إن طلقت نفسها في قوله « طلقي نفسك» فهي واحدة رجعية

If she divorces herself in response to his saying “Divorce yourself,” then it is one revocable [pronouncement of divorce].

و إن طلقت نفسها ثلاثا وقد أراد الزوج ذلك وقعن عليها

If she divorces herself thrice, and the husband had intended that, [all three pronouncements of divorce] take effect on her.

و إن قال لها «طلقي نفسك متى شئت» فلها أن تطلق نفسها في المجلس وبعده

If he says to her, “Divorce yourself whenever you want,” then she may divorce herself during that session and [also] after it.

و إذا قال لرجل «طلق امرأتي» فله أن يطلقها في المجلس وبعده

And when he says to another man, “Divorce my wife,” then [the other man] may divorce her during the session and [also] after it.

و إن قال «طلقها إن شئت» فله أن يطلقها في المجلس خاصة

If he says [to the man], “Divorce her if you want,” then [the delegate] may only divorce her during the sitting.

و إن قال لها «إن كنت تحبيني أو تبغضيني فأنت طالق» فقالت: «أنا أحبك» أو «أبغضك» وقع الطلاق و إن كان في قلبها خلاف ما أظهرت

If he says to her, “If you love me…,” or “…hate me, then you are divorced,” and she replies, “I love you,” or “I hate you,” [whichever applies, then] the divorce takes effect, even though in her heart there is the opposite of what she expresses.

و إذا طلق الرجل امرأته في مرض موته طلاقا بائنا فمات وهي في العدة ورثت منه

If a man divorces his wife during his terminal illness with a final divorce and he dies whilst she is [still] in her waiting period (*‘iddah*), she inherits him.[888]

و إن مات بعد انقضاء عدتها فلا ميراث لها

[But] if he dies after the completion of her *‘iddah*, then she is not entitled to inheritance.[889]

و إذا قال لامرأته «أنت طالق إن شاء الله» متصلا لم يقع الطلاق عليها

If someone says to his wife, “You are divorced, Allah willing (*in shā Allāh*),” connecting [*in shā Allāh* to his declaration], the divorce does not take effect upon her.

وإن قال لها «أنت طالق ثلاثا إلا واحدة» طلقت اثنتين، وإن قال «ثلاثا إلا اثنتين» طلقت واحدة

If he says to her, "You are divorced thrice, except for one," [then] she is divorced two [pronouncements of divorce], and if he says, "…thrice, except for two," [then] she is divorced one [pronouncement of divorce].[890]

وإذا ملك الزوج امرأته أو شقصا منها أو ملكت المرأة زوجها أو شقصا منه وقعت الفرقة بينهما

When a husband becomes the owner of his wife, or a part of her, or a woman becomes the owner of her husband, or a part of him, [then] separation[891] takes place between them.[892]

باب الرجعة

RETRACTION OF DIVORCE (*RAJ'AH*)

إذا طلق الرجل امرأته تطليقة رجعية أو تطليقتين فله أن يراجعها في عدتها، رضيت المرأة بذلك أو لم ترض

When a man divorces his wife with a single revocable divorce, or [with] two [revocable] pronouncements of divorce, he may take her back during her *'iddah*, whether the woman consents to that [retraction] or does not consent.

والرجعة أن يقول لها: راجعتك، أو راجعت امرأتي، أو يطأها، أو يقبلها، أو يلمسها بشهوة، أو ينظر إلى فرجها بشهوة

The retraction (*raj'ah*) is [made when]:

1. He says to her, "I have taken you back,"
2. "I have taken my wife back," or
3. He has sexual intercourse with her,
4. He kisses her,
5. He touches her with [sexual] desire, or
6. He looks at her private parts with [sexual] desire.

ويستحب له أن يشهد على الرجعة شاهدين، وإن لم يشهد صحت الرجعة

It is recommended for him to take two male witnesses for the retraction, but if he does not take any witnesses, the retraction is [still] valid.

و إذا انقضت العدة فقال الزوج: «قد كنت راجعتها في العدة» فصدقته فهي رجعة، و إن كذبته فالقول قولها ولا يمين عليها عند أبي حنيفة رحمه الله تعالى

When the *‘iddah* elapses and the husband says, “I had taken her back during the *‘iddah*,” and she affirms him [in that], then that is a [valid] retraction. If she contradicts him, then the [legally decisive] statement is her saying, and according to Abū Ḥanīfah, may Allah have mercy on him, she does not have to take an oath.

و إذا قال الزوج «قد راجعتك» فقالت مجيبة له «قد انقضت عدتي» لم تصح الرجعة عند أبي حنيفة رحمه الله تعالى

When the husband says, “I had taken you back,” and she says in reply, “My *‘iddah* had ended,” the retraction is not valid, according to Abū Ḥanīfah, may Allah have mercy on him.

و إذا قال زوج الأمة بعد انقضاء عدتها «قد كنت راجعتك في العدة» فصدقه المولى وكذبته الامة فالقول قولها عند أبي حنيفة رحمه الله تعالى

When the husband of a slave-woman says after the termination of her *‘iddah*, “I had taken you back during the *‘iddah*,” and the master [of the slave-woman] verifies that but the slave-woman denies it, then the [decisive] statement is her saying, according to Abū Ḥanīfah, may Allah have mercy on him.

و إذا انقطع الدم من الحيضة الثالثة لعشرة أيام انقطعت الرجعة و انقضت عدتها و إن لم تغتسل، و إن انقطع الدم لأقل من عشرة أيام لم تنقطع الرجعة حتى تغتسل، أو يمضي عليها وقت صلاة، أو تيمم وتصلي عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى: إذا تيممت المرأة انقطعت الرجعة، و إن لم تصل

When the bleeding of the third [period] of menstruation ceases in ten

days, the retraction period has elapsed and her *‘iddah* has ended, even if she has not taken a *ghusl*. If, however, the bleeding ceases in less than ten days, the retraction [period] does not end until she takes a *ghusl* or the duration of one prayer passes over her[893] or she performs t*ayammum* and prays, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that when the woman has performed *tayammum*, the retraction [period] ends, even though she does not pray.

وإن اغتسلت ونسيت شيئا من بدنها لم يصبه الماء، فإن كان عضوا كاملا فما فوقه لم تنقطع الرجعة، وإن كان أقل من عضو انقطعت الرجعة

If she takes a *ghusl* and forgets [to wash] a part of her body which water has not touched:

1. If that is a complete limb or more than that, [then] the retraction [period] has not ended,[894] but
2. If it is less than a limb, then the retraction [period] has ended.

والمطلقة الرجعية تتشوف وتتزين ويستحب لزوجها أن لا يدخل عليها حتى يستأذنها أو يسمعها خفق نعليه

The woman who has been given a revocable divorce should be in anticipation [of retraction] and [may] make herself up.[895] It is recommended for her husband not to enter upon her until he seeks her permission and lets her hear his footfall.

والطلاق الرجعي لا يحرم الوطئ

Revocable divorce does not prohibit sexual intercourse.

وإذا كان الطلاق بائنا دون الثلاث فله أن يتزوجها في عدتها وبعد انقضاء عدتها

If it was a final divorce of less than three [pronouncements of divorce], then [the divorcing husband] may marry her during her *‘iddah* and [also] after the completion of her *‘iddah*.

On Legalisation of Remarriage (*Ḥalālah*)

وإن كان الطلاق ثلاثا في الحرة أو اثنتين في الأمة لم تحل له حتى تنكح زوجا غيره نكاحا صحيحا ويدخل بها ثم يطلقها أو يموت عنها

If the divorce is [pronounced] thrice for the free woman, or twice for the slave-woman,[896] [then] she is not lawful for [the divorcing husband][897] until she marries a husband other than him in a valid marriage, and he consummates the marriage with her, [and] thereafter divorces her, or dies leaving her [as his widow].

والصبي المراهق في التحليل كالبالغ

An adolescent boy is like an adult in [terms of] making [her] *ḥalāl* [for her first husband] (*taḥlīl*).[898]

ووطئ المولى أمته لا يحللها

The sexual intercourse of the master with his slave-woman does not render her lawful [for her first husband].[899]

وإذا تزوجها بشرط التحليل فالنكاح مكروه، فإن طلقها بعد وطئها حلت للاول

When someone marries her with the condition of rendering [her] *ḥalāl* [for her first husband] it is disapproved. And if he divorces her after having sexual intercourse with her, she becomes lawful for the first [husband to remarry].

وإذا طلق الرجل الحرة تطليقة أو تطليقتين وانقضت عدتها وتزوجت بزوج آخر فدخل بها ثم عادت إلى الأول عادت بثلاث تطليقات

When a man divorces a woman with one or two pronouncements of divorce, and her *‘iddah* elapses and she marries another husband who consummates the marriage with her. Thereafter, she returns to the first [husband],[900] she returns with [all] three pronouncements of divorce [still in

hand].[901]

ويهدم الزوج الثاني ما دون الثلاث كما يهدم الثلاث عند أبي
حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رحمه الله تعالى :
لا يهدم الزوج الثاني ما دون الثلاث

The second husband tears up what is less than three [pronouncements of divorce], just as he tears up [all] three [pronouncements of divorce], according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muḥammad, may Allah have mercy on him, said that the second husband does not tear up [that] what is less than three [pronouncements of divorce].

و إذا طلقها ثلاثا فقالت «قد انقضت عدتي وتزوجت بزوج آخر
ودخل بي الزوج الثاني وطلقني وانقضت عدتي» والمدة تحتمل ذلك
جاز للزوج الأول أن يصدقها إذا كان غالب ظنه أنها صادقة

When he divorces her with three [pronouncements of divorce] and then she says, "My *'iddah* has elapsed, I married another husband, the second husband had sexual intercourse with me, he divorced me and my *'iddah* has ended," and the period of time bears that interpretation,[902] [then] it is permitted for the first husband to believe her if on the whole he thinks that she is truthful.

كتاب الإيلاء

ĪLĀ’ – VOWING TO ABSTAIN

(FROM SEXUAL INTERCOURSE WITH ONE’S WIFE)[903]

إذا قال الرجل لامرأته «والله لا أقربك، أو لا أقربك أربعة أشهر» فهو مول، فإن وطئها في الأربعة الأشهر حنث في يمينه، ولزمته الكفارة، وسقط الإيلاء

When a man says to his wife, “By Allah! I shall not come near you,”[904] or “…I shall not come near you for four months,” then he is someone who makes the vow of continence (*mūlī*). Thus, if he has sexual intercourse with her within the four months, he has breached the vow, and an atonement is binding upon him whilst the *īlā’* will have ended.

وإن لم يقربها حتى مضت أربعة أشهر بانت بتطليقة، فإن كان حلف على أربعة أشهر فقد سقطت اليمين، وإن كان حلف على الأبد فاليمين باقية

If he does not go near to her [for sexual intercourse] until four months elapse, she is divorced with one final pronouncement of divorce. If he had vowed four months, the vow will have ended, but if he had vowed (*īlā’*) forever, then the vow remains [intact].

فإن عاد فتزوجها عاد الإيلاء، فإن وطئها، وإلا وقعت بمضي أربعة أشهر تطليقة أخرى، فإن تزوجها ثالثا عاد الإيلاء ووقعت عليها بمضي أربعة أشهر تطليقة أخرى

If [the person who vowed continence forever] reverts and marries her [again], the *īlā’* returns. If he has sexual intercourse with her, [it is better,] otherwise with the passing of four months another pronouncement of divorce takes place.[905] If he marries her a third time, the *īlā’* returns, and with the

passing of four months, another pronouncement of divorce[906] takes place.

فإن تزوجها بعد زوج آخر لم يقع بذلك الإيلاء طلاق، واليمين باقية، فإن وطئها كفر عن يمينه

If he marries her after [her marriage to] another husband,[907] divorce will not occur with that *īlā'* again, but the vow remains [intact].[908] So, if he has sexual intercourse with her, [then] he has to pay atonement for the [breach of] vow.

فإن حلف على أقل من أربعة أشهر لم يكن موليا

If he makes a vow of less than four months, he is not someone who makes a vow of continence (*mūlī*).[909]

وإن حلف بحج أو بصوم أو بصدقة أو عتق أو طلاق فهو مول، وإن آلى من المطلقة الرجعية كان موليا، وإن آلى من البائنة لم يكن موليا، ومدة إيلاء الأمة شهران

If he makes a vow of [performing] *ḥajj*, fasting, charity, freeing [a slave] or divorce, then he is someone who makes a vow of continence, and if he makes *īlā'* from a divorcée with a revocable divorce,[910] then he is [also] someone who makes a vow of continence.[911]

If he vows to abstain from sexual intercourse from a wife who is finally divorced, then he is not someone who makes a vow of continence.[912] The period of *īlā'* for a slave-woman is two months.[913]

وإن كان المولي مريضا لا يقدر على الجماع أو كانت المرأة مريضة أو كانت رتقاء أو صغيرة لا يجامع مثلها أو كانت بينهما مسافة لا يقدر أن يصل إليها في مدة الإيلاء، ففيئه أن يقول بلسانه: فئت إليها، فإن قال ذلك سقط الإيلاء

1. If the person who makes a vow of continence is ill and cannot perform sexual intercourse, or
2. The woman is ill,
3. She is atretic,
4. She is a minor with whom sexual intercourse is not possible, or

5. There is such a distance between them that he cannot reach her within the period of *īlā’*,

then his returning to her is [for him] to say with his tongue,[914] “I have returned to her.”[915] Thus, if he says that, the *īlā’* lapses.

وإن صح في المدة بطل ذلك الفيء وصار فيئه الجماع

If he recovers[916] during the period [of *īlā’*], then that [verbal expression of] return becomes void and sexual intercourse is rendered his [means of] return.

وإذا قال لامرأته «أنت علي حرامٌ» سئل عن نيته، فإن قال أردت الكذب فهو كما قال

When one says to his wife, “You are *ḥarām* for me,” he is asked regarding his intention, and if he says, “I intended to lie,” then it is as he says.

وإن قال أردت به الطلاق فهي تطليقة بائنة، إلا أن ينوي الثلاث

If he says, “By it, I intended divorce,” then it is one final divorce, unless he intended [all] three.

وإن قال أردت به الظهار فهو ظهار

If he says, “By it, I intended *ẓihār* (unlawful assimilation),” then it is ẓihār.

وإن قال أردت به التحريم أو لم أرد به شيئا فهو يمين يصير به موليا

If he says, “By it, I intended prohibition,” or “I did not intend anything by it,” then it is [considered] a vow [of continence] by which he becomes someone who makes a vow of continence.

كتاب الخلع

KHUL' – DIVORCE AT THE INSTANCE OF THE WIFE

إذا تشاقّ الزوجان وخافا أن لا يقيما حدود الله فلا بأس أن تفتدي نفسها منه بمال يخلعها به

When the spouses clash [with each other] and fear that they will not be able to uphold the boundaries set by Allah, then there is no objection to her ransoming herself from him with property (*māl*),[917] for which he will release her.

فإذا فعل ذلك وقع بالخلع تطليقة بائنة، ولزمها المال

When he does that, by divorce at the instance of the wife (*khul'*) one final divorce takes effect, and the [payment of the] property becomes binding upon her.

وإن كان النشوز من قبله كره له أن يأخذ منها عوضا، وإن كان النشوز من قبلها كره له أن يأخذ أكثر مما أعطاها، فإن فعل ذلك جاز في القضاء

If the discord (*nushūz*) is from his side, [then] it is disliked for him to take a consideration from her, but if the discord is on her part, it is disliked for him to take more than what he has given her. But, if he does that, it is permitted in a legal decree.[918]

وإن طلقها على مال فقبلت وقع الطلاق، ولزمها المال، وكان الطلاق بائنا

If he divorces her [in return] for goods and she accepts, the divorce takes effect and the goods are binding upon her, and the divorce is [one] final

[divorce].

و إن بطل العوض في الخلع مثل أن تخالع المرأة المسلمة على خمر أو خنزير فلا شيء للزوج، والفرقة بائنة

If the consideration for the divorce at the instance of the wife (*khul'*) is void, for example, he gives divorce at the instance of the wife (*khul'*) to a Muslim woman in return for wine or pigs, [then] the husband has nothing,[919] and the separation is [one] final [divorce].

و إن بطل العوض في الطلاق كان رجعيا

If the consideration for the divorce is void, then it is [one] revocable [divorce].[920]

وما جاز أن يكون مهرا في النكاح جاز أن يكون بدلا في الخلع

Whatever is permitted to be dowry in the marriage is permitted to be a substitute (*badal*) in divorce at the instance of the wife (*khul'*).

فإن قالت «خالعني على ما في يدي» فخالعها ولم يكن في يدها شيء فلا شيء له عليها

If she says, "Release me [in exchange] for whatever is in my hand," and he releases her but there is nothing in her hand, then she owes him nothing.

و إن قالت: خالعني على ما في يدي من مال فخالعها ولم يكن في يدها شيء ردت عليه مهرها

If she says, "Release me for whatever goods are in my hand," and he releases her but there is nothing in her hand, [then] she is to return her dowry to him.[921]

و إن قالت خالعني على ما في يدي من دراهم أو من الدراهم ففعل ولم يكن في يدها شيء فعليها ثلاثة دراهم

If she says, "Release me for whatever dirhams are in my hand," and he does [that] but there is nothing in her hand, then she owes three dirhams.[922]

وإن قالت طلقني ثلاثا بألف فطلقها واحدة فعليها ثلث الألف

If she says, “Divorce me thrice for a thousand,” and he divorces her once, then she owes [him] a third of a thousand [dirhams].

وإن قالت طلقني ثلاثا على ألف فطلقها واحدة فلا شيء عليها عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : عليها ثلث الألف

If she says, “Divorce me thrice *against* a thousand,” and he divorces her once, then she owes nothing, according to Abū Ḥanīfah, may Allah have mercy on him. They,[923] may Allah have mercy on them, however, said that she owes a third of a thousand.

ولو قال الزوج طلقي نفسك ثلاثا بألف أو على ألف فطلقت نفسها واحدة لم يقع عليها شيء من الطلاق

If the husband says, “Divorce yourself thrice for a thousand,” or “… against a thousand,” and she divorces herself [only] once, nothing of divorce takes effect against her.[924]

والمبارأة كالخلع

Divorce through mutual consent (*mubāra’ah*) is like divorce at the instance of the wife (*khul‘*).

والخلع والمبارأة يسقطان كل حق لكل واحد من الزوجين على الآخر مما يتعلق بالنكاح عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف رحمه الله تعالى : المبارأة تسقط والخلع لا يسقط، وقال محمد رحمه الله تعالى: لا تسقطان إلا ما سمياه

Divorce at the instance of the wife (*khul‘*) and divorce through mutual consent (*mubāra’ah*) both waive every right of either spouse against the other, of whatever is connected to the marriage, according to Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf, may Allah have mercy on him, said that divorce through mutual consent (*mubāra’ah*) waives [the rights], but divorce at the instance of the wife (*khul‘*) does not waive [them], but Muḥammad, may Allah have mercy on him, said that neither of the two

waive anything except that which [the spouses] specify.

كتاب الظهار

ẒIHĀR – INJURIOUS COMPARISON

إذا قال الزوج لامرأته «أنت علي كظهر أمي» فقد حرمت عليه
لا يحل له وطؤها ولا مسها ولا تقبلها حتى يكفر عن ظهاره

When a man says to his wife, “You are to me like my mother’s back,” she becomes prohibited to him; it is not *ḥalāl* for him to have sexual intercourse with her, nor to touch her or kiss her, until he expiates for his injurious comparison.

فإن وطئها قبل أن يكفر استغفر الله تعالى، ولا شيء عليه غير
الكفارة الأولى، ولا يعاود حتى يكفر

Then, if he has sexual intercourse with her before he expiates, he should seek forgiveness of Allah, and there is no liability upon him other than the first expiation, but he is not to do that repeatedly until he has made expiation.

والعود الذي تجب به الكفارة هو أن يعزم على وطئها

The resumption for which expiation is obligatory is for him to resolve to have sexual intercourse with her.

The Wording of Injurious Comparison (*ẓihār*)

و إذا قال «أنت علي كبطن أمي، أو كفخذها، أو كفرجها»
فهو مظاهر

If someone says [to his wife]:

1. “You are like the belly of my mother,”
2. “…like her thigh,” or
3. “…like her vagina,”

[then] he has committed injurious comparison (*ẓihār*).

وكذلك إن شبهها بمن لا يحل له النظر إليها على التأبيد من محارمه مثل أخته أو عمته أو أمه من الرضاعة

[And it is] likewise, if he injuriously compares her to one of the unmarriageable relatives (*maḥrams*), looking at whom [with sexual desire] is eternally unlawful, for example, his sister, his paternal aunt or his foster mother.

وكذلك إن قال: رأسك علي كظهر أمي، أو فرجك، أو وجهك، أو رقبتك، أو نصفك، أو ثلثك

[And it is] likewise, if he says:

1. "Your head upon me is like the back of my mother,"
2. "Your vagina…,"
3. "Your face…,"
4. "Your neck…,"
5. "A half of you…," or
6. "A third of you…."

وإن قال «أنت علي مثل أمي» رجع إلى نيته، فإن قال أردت الكرامة فهو كما قال

If he says, "You, for me, are like my mother," [then] one resorts to his intention, and if he says, "By it I intended reverence," then it is as he says.

وإن قال أردت الظهار فهو ظهار، وإن قال أردت الطلاق فهو طلاق بائن، وإن لم تكن له نية فليس بشيء

If he says, "By it, I intended injurious comparison (*ẓihār*)," then it is injurious comparison (*ẓihār*), and if he said, "I meant divorce," then it is a final divorce, but if he had no intention, then it is nothing.

ولا يكون الظهار إلا من زوجته، فإن ظاهر من أمته لم يكن مظاهرا

Injurious comparison does not occur except with one's wife, thus, if he makes [a statement of] injurious comparison (*ẓihār*) against his slave-woman, he has not committed injurious comparison (*ẓihār*).

ومن قال لنسائه «أنتن علي كظهر أمي» كان مظاهرا من جماعتهن، وعليه لكل واحدة منهن كفارة

If he says to [all of] his wives, "You are all to me like the back of my mother," then he has committed injurious comparison (*ẓihār*) against all of them and is liable to expiation [on account of] each one of them.

The Expiation of Injurious Comparison (*ẓihār*)

وكفارة الظهار: عتق رقبة، فإن لم يجد فصيام شهرين متتابعين، فمن لم يستطع فإطعام ستين مسكينا

The expiation for [committing] injurious comparison (*ẓihār*) is:

1. The freeing of a slave, if that is not possible, then
2. Fasting for two months consecutively, and for someone who is not able [to fast],
3. The feeding of sixty destitute people.

كل ذلك قبل المسيس

All that [should be fulfilled] before contact[925] [with his wife].

ويجزئ في ذلك عتق الرقبة المسلمة والكافرة، والذكر، والأنثى، والصغير، والكبير، ولا يجزئ العمياء، ولا مقطوعة اليدين و الرجلين، ويجوز الأصم، ومقطوع إحدى اليدين وإحدى الرجلين من خلاف، ولا يجوز مقطوع إبهامي اليدين، ولا يجوز المجنون الذي لا يعقل

In that it is sufficient to free a Muslim or non-Muslim [slave], male or female, minor or major, but a blind slave does not suffice nor one both of whose hands or feet are amputated. However, it is permitted [for expiation, to free] a deaf [slave] and one one of whose hands and one of his feet are amputated on opposite [sides],[926] but one both of whose thumbs are amputated is not permitted, nor an insane [slave] who does not understand [anything].

ولا يجوز عتق المدبر، وأم الولد والمكاتب الذي أدى بعض المال،
فإن أعتق مكاتبا لم يؤد شيئا جاز

Freeing a slave who is to be freed on the death of his owner (*mudabbar*), a slave-woman who is the mother of her owner's child (*umm al-walad*)[927] and a slave who has contracted to purchase his freedom (*mukātab*) who has discharged some of his payment, is not allowed, [but] it is permitted if one frees a *mukātab* who has not discharged anything.

فإن اشترى أباه أو ابنه ينوي بالشراء الكفارة جاز عنها

If someone purchases his [own] father or his [own] son and intends [to free them in order to perform] expiation by that purchase, it is valid for it [the purpose of expiation].

و إن أعتق نصف عبد مشرك عن الكفارة وضمن قيمة باقيه
فأعتقه لم يجز عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف
ومحمد رحمهما الله تعالى: يجزيه إن كان المعتق موسرا و إن
كان معسرا لم يجز

If one frees a half of a jointly-owned slave for [the purpose of] expiation and accepts liability for the value of the remainder of [that slave], and frees him, it is not permitted, according to Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that it is sufficient for him if the one who is setting free is in [financial] ease, but if he is in [financial] difficulty, [then] it is not valid.

و إن أعتق نصف عبده عن كفارته ثم أعتق باقيه عنها جاز

If he frees a half of his slave for [the purpose of] his expiation, then later frees the remainder of him for that [expiation], it is permitted.[928]

و إن أعتق نصف عبده عن كفارته ثم جامع التي ظاهر منها ثم
أعتق باقيه لم يجز عند أبي حنيفة رحمه الله تعالى

If he frees a half of his slave for his expiation, then has sexual intercourse with [the wife] whom he had committed the injurious comparison against, then frees the remainder of him, it is not permitted, according to Abū

Ḥanīfah, may Allah have mercy on him.[929]

فإن لم يجد المظاهر ما يعتقه فكفارته صوم شهرين متتابعين ليس فيهما شهر رمضان ولا يوم الفطر ولا يوم النحر ولا أيام التشريق

If the person who made the injurious comparison (*muẓāhir*) does not find that which he may set free, then his expiation is to fast two successive months, neither of the two being the month of Ramadan,[930] the day of [*ʻĪd*] al-Fiṭr, the day of *an-Naḥr* (sacrifice), or the days of *tashrīq*.[931]

فإن جامع التي ظاهر منها في خلال الشهرين ليلا عامدا أو نهارا ناسيا استأنف عند أبي حنيفة و محمد رحمهما الله تعالى، و إن أفطر يوما منها بعذر أو بغير عذر استأنف

If he has sexual intercourse with the one whom he committed the injurious comparison against, during the two months [of expiation], whether deliberately at night, or forgetfully during the day, he is to restart [the fasting from day one], according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, and [similarly] if he breaks the fast[932] on any day of them[933] with or without an excuse, he is to restart [the expiation from day one].[934]

و إن ظاهر العبد لم يجزه في الكفارة إلا الصوم، فإن أعتق المولى عنه أو أطعم لم يجزئه، فإن لم يستطع المظاهر الصيام أطعم ستين مسكينا، و يطعم كل مسكين نصف صاع من بر أو صاعا من تمر أو شعير أو قيمة ذلك

If a slave commits injurious comparison nothing suffices him as expiation but to fast. Thus, if the master frees [a slave] on his behalf, or he feeds [sixty needy persons] on his behalf, it is not enough for [the slave who made the injurious comparison (*muẓāhir*)]. Then, if the person who made the injurious comparison (*muẓāhir*) is not able to fast he feeds sixty destitute people. He is to feed each needy person:

1. A half *ṣāʻ* of wheat,
2. A *ṣāʻ* of dates or barley, or
3. The value of that.

فإن غداهم وعشاهم جاز، قليلا كان ما أكلوا أو كثيرا، وإن أطعم مسكينا واحدا ستين يوما أجزأه، وإن أعطاه في يوم واحد لم يجزه إلا عن يومه

If he feeds them dinner and supper, it is permitted, whether what they eat is a little or a lot, and if he feeds [only] one needy person for sixty days, that suffices him. However, if he feeds him for one day, that is not valid for him except for that day only.[935]

وإن قرب التي ظاهر منها في خلال الإطعام لم يستأنف

If he approaches the woman against whom he committed the injurious comparison[936] during the [period of] feeding [the needy], he is not required to restart [the expiation of feeding] from the beginning.

ومن وجبت عليه كفارتا ظهار فأعتق رقبتين لا ينوي لإحداهما بعينها جاز عنهما، وكذلك إن صام أربعة أشهر أو أطعم مائة وعشرين مسكينا جاز

Whoever is obliged with two expiations for injurious comparison, and he frees two slaves without making the intention for one of them specifically, [the atonement of setting free] is permitted for both of them. [And] likewise, if he fasts for four months, or he feeds one hundred and twenty persons it is permitted.

وإن أعتق رقبة واحدة عنهما أو صام شهرين كان له أن يجعل ذلك عن أيتهما شاء

If he frees one slave on account of both [expiations], or fasts for two months, [then] he may attribute that to either of the two [expiations] he wants.

كتاب اللعان

LI'ĀN – IMPRECATION BY BOTH PARTIES

إذا قذف الرجل امرأته بالزنا وهما من أهل الشهادة، والمرأة ممن
يحد قاذفها، أو نفى نسب ولدها وطالبته المرأة بموجب القذف
فعليه اللعان

When a man accuses his wife of sexual infidelity without substantiation, and both of them are of the people whose testimony is accepted (*ahl ash-shahādah*)[937] and the wife is one of those whose accuser of unsubstantiated unlawful sexual intercourse would be punishable with a *ḥadd* [punishment], or he denies paternity of her child, and the wife demands the consequences of an unsubstantiated accusation of sexual infidelity from him, then he is liable to [the process of] imprecation.[938]

فإن امتنع منه حبسه الحاكم حتى يلاعن أو يكذب نفسه فيحد

If he refrains from it, the judge (*ḥākim*) is to detain him until he engages in [the process of] imprecation, or admits he was lying [for which] *ḥadd* [punishment] is applied to him.[939]

و إن لاعن وجب عليها اللعان، فإن امتنعت حبسها الحاكم حتى
تلاعن أو تصدقه

If he makes the imprecation, [then] engaging in [the process of] imprecation[940] is obligatory upon her [also]. If she refrains [from making the imprecation], the judge (*ḥākim*) should detain her until she imprecates or [until] she says he is telling the truth.[941], [942]

و إذا كان الزوج عبدا أو كافرا أو محدودا في قذف فقذف
امرأته فعليه الحد

If the husband is a slave or a non-Muslim, or has been subjected to a *ḥadd*

[punishment] for unsubstantiated accusations of sexual infidelity, and he makes unsubstantiated accusations of sexual infidelity against his [own] wife, then he is due [the punishment for] unsubstantiated accusations of sexual infidelity.

و إن كان الزوج من أهل الشهادة وهي أمة أو كافرة أو محدودة في قذف أو كانت ممن لا يحد قاذفها فلا حد عليه في قذفها ولا لعان

If the husband is one of the people whose testimony is accepted (*ahl ash-shahādah*) and [the accused wife] is a slave-woman or a non-Muslim, or she has been punished with *ḥadd* for unsubstantiated accusations of sexual infidelity, or she is someone whose accuser of unsubstantiated sexual infidelity cannot be punished with the *ḥadd* punishment, then there is no *ḥadd* punishment against him for his unsubstantiated accusations against her of sexual infidelity, nor will there be any imprecation.

The Procedure of Imprecation by Both Parties

وصفة اللعان: أن يبتدئ القاضي فيشهد أربع مرات يقول في كل مرة: أشهد بالله إني لمن الصادقين فيما رميتها به من الزنا، ثم يقول في الخامسة: لعنة الله عليه إن كان من الكاذبين فيما رماها به من الزنا و يشير إليها في جميع ذلك

The procedure for imprecation is that the judge initiates [the proceedings with the husband], who testifies four times, each time saying, "I testify by Allah that I am truthful in that adultery I have accused her of." The fifth time, he says that may the curse of Allah be upon him if he is a liar in that adultery he has accused her of. He points towards her in all of that [what he says].

ثم تشهد المرأة أربع مرات تقول في كل مرة أشهد بالله إنه لمن الكاذبين فيما رماني به من الزنا، وتقول في الخامسة: غضب الله عليها إن كان من الصادقين فيما رماني به من الزنا

Then the woman testifies four times, each time saying, "I testify by Allah that he is a liar in that adultery he has accused me of." The fifth time, she

says that may the anger of Allah be upon her “if he is truthful about that adultery he has accused me of.”

و إذا التعنا فرق القاضي بينهما، وكانت الفرقة تطليقة بائنة عند أبي حنيفة ومحمد رحمهما الله تعالى، وقال أبو يوسف رحمه الله تعالى: تحريما مؤبدا

When both of them have made the imprecation, the judge orders their separation. The separation is one final divorce, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, but Abū Yūsuf, may Allah have mercy on him, said that it is an eternal prohibition.[943]

و إن كان القذف بولد نفى القاضي نسبه وألحقه بأمه

If the unsubstantiated accusation of sexual infidelity (*qadhf*) is regarding a child, the judge should negate its paternity and attach it to its mother.[944]

فإن عاد الزوج وأكذب نفسه حده القاضي وحل له أن يتزوجها، وكذلك إن قذف غيرها فحُدّ به أو زنت فحدت

If the husband retracts[945] and belies himself, the judge applies the *ḥadd* punishment on him, and it becomes lawful for him to marry her [again], and likewise if he makes unsubstantiated accusations of sexual infidelity against someone other than her and is [subsequently] punished with the *ḥadd* punishment, or she commits adultery and is [subsequently] punished with the *ḥadd* punishment.

و إن قذف امرأته وهي صغيرة أو مجنونة فلا لعان بينهما، ولا حد

If he makes unsubstantiated accusations of sexual infidelity against his [own] wife and she is a minor or insane, then there is no imprecation between them, nor is there any *ḥadd* punishment.

وقذف الأخرس لا يتعلق به اللعان

An unsubstantiated accusation of sexual infidelity made by a mute has no imprecation [process] attached to it.

وإذا قال الزوج «ليس حملك مني» فلا لعان، وإن قال: «زنيت وهذا الحمل من الزنا» تلاعنا ولم ينف القاضي الحمل منه

When the husband says [to his wife], “Your pregnancy is not from me,” there is no imprecation.[946] If he says, “You have committed adultery and this pregnancy is from that adultery,” they both engage in the imprecation [process], and the judge does not negate the pregnancy from him.

وإذا نفى الرجل ولد امرأته عقيب الولادة، أو في الحال التي تقبل التهنئة أو تبتاع له آلة الولادة صح نفيه ولاعن به

When the man negates [paternity of] his wife’s child following the birth, during the period when congratulations are accepted for it, or when baby products are purchased for it, his negation of it is valid, and he is to engage in the imprecation [process] for it.

وإن نفاه بعد ذلك لاعن ويثبت النسب، وقال أبو يوسف ومحمد رحمهما الله تعالى: يصح نفيه في مدة النفاس

If he negates it after that, he engages in the imprecation [process] and [his] paternity is established. Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that his negation of it during the period of postnatal bleeding is valid.[947]

وإن ولدت ولدين في بطنٍ واحد فنفى الأول واعترف بالثاني ثبت نسبهما وحد الزوج، وإن اعترف بالأول ونفى الثاني ثبت نسبهما ولاعن

If she bears two babies in one pregnancy, [then] he denies the first and acknowledges the second, it establishes the paternity of them both [to the same father], and the husband is punished with the *ḥadd* punishment.[948] If he acknowledges the first [baby] and denies the second it establishes the paternity of both of them, and he is to engage in the process of imprecation.

كتاب العدة

'IDDAH – WAITING PERIOD

إذا طلق الرجل امرأته طلاقا بائنا أو رجعيا أو وقعت الفرقة بينهما بغير طلاق وهي حرة ممن تحيض فعدتها ثلاثة أقراء، والأقراء: الحيض

When a man divorces his wife with a final or a revocable divorce, or a separation without divorce has taken place between them, and she is a free woman who menstruates, her *'iddah* is three menstrual cycles (*qur'*), and *qur'* is menstruation.

وإن كانت لا تحيض من صغر أو كبر فعدتها ثلاثة أشهر، وإن كانت حاملا فعدتها أن تضع حملها

If she does not menstruate due to youth or old age, then her *'iddah* is three months. If she is pregnant, then her *'iddah* is that she delivers her foetus.[949]

وإن كانت أمة فعدتها حيضتان، وإن كانت لا تحيض فعدتها شهر ونصف

If she is a slave-woman, then her *'iddah* is two menstrual cycles, and if she does not menstruate, then her *'iddah* is a month and a half.

وإذا مات الرجل عن امرأته الحرة فعدتها أربعة أشهر وعشرة أيام، وإن كانت أمة فعدتها شهران وخمسة أيام، وإن كانت حاملا فعدتها أن تضع حملها

When a man dies leaving his wife [who is a] free woman, then her *'iddah* is four months and ten days. If she is a slave-woman, then her *'iddah* is two months and five days,[950] and if she is pregnant, then her *'iddah* is that she delivers her foetus.

و إذا ورثت المطلقة في المرض فعدتها أبعد الأجلين عند أبي حنيفة رحمه الله تعالى

When a woman who was divorced during the [terminal] illness [of her husband] inherits, her *‘iddah* is the further of the two terms, according to Abū Ḥanīfah, may Allah have mercy on him.[951]

و إن أعتقت الأمة في عدتها من طلاق رجعي انتقلت عدتها إلى عدة الحرائر، و إن أعتقت وهي مبتوتة أو متوفى عنها زوجها لم تنقل عدتها إلى عدة الحرائر

If a slave-woman is set free during her *‘iddah* from a revocable divorce, her *‘iddah* converts to the *‘iddah* of free women, but if she is set free while irrevocably divorced or widowed, [then] her *‘iddah* does not convert to the *‘iddah* of free women.

و إن كانت آيسة فاعتدت بالشهور ثم رأت الدم انتقض ما مضى من عدتها وكان عليها أن تستأنف العدة بالحيض

If she is someone who does not menstruate, who calculates her *‘iddah* in months, then later she sees blood, whatever of her *‘iddah* has passed is overruled, and it is necessary for her to restart her *‘iddah* according to menstruation.

والمنكوحة نكاحاً فاسدا والموطوئة بشبهة عدتهما الحيض في الفرقة والموت

The woman who is married with an invalid marriage (*nikāḥ fāsid*), and the woman who has sexual intercourse because of an ambiguity, their *‘iddah* is based on menstruation in the cases of separation [from] and death [of her husband].

و إذا مات مولى أم الولد عنها أو أعتقها فعدتها ثلاث حيض

When the master of the [slave-woman who is] mother of [his] child (*umm al-walad*) dies leaving her, or he sets her free, then her *‘iddah* is three menstruations.

و إذا مات الصغير عن امرأته وبها حبل فعدتها أن تضع حملها،
فإن حدث الحبل بعد الموت فعدتها أربعة أشهر وعشرة أيام

When a minor dies leaving his wife [as his widow], and she is pregnant, then her *‘iddah* is that she delivers her foetus. Then, if the pregnancy becomes manifest after the death [of the husband], her *‘iddah* is four months and ten days.

و إذا طلق الرجل امرأته في حالة الحيض لم تعتد بالحيضة التي
وقع فيها الطلاق

When a man divorces his wife during [her] state of menstruation, she does not count the menstruation in which the divorce took place.

و إذ وطئت المعتدة بشبهة فعليها عدة أخرى، وتداخلت العدتان،
فيكون ما تراه من الحيض محتسبا منهما جميعا، و إذا انقضت العدة
الأولى ولم تكمل الثانية فعليها إتمام العدة الثانية

When a woman in *‘iddah* has sexual intercourse because of an ambiguity, she is liable to another *‘iddah* and both *‘iddahs* may overlap [each other]. Whatever of menstrual bleeding she sees, it is reckoned for both [*‘iddahs*]. Thus, when the first *‘iddah* elapses and the second is not [yet] complete, she is liable to complete the second *‘iddah*.

وابتداء العدة في الطلاق عقيب الطلاق، وفي الوفاة عقيب الوفاة

The beginning of the *‘iddah* due to divorce follows the divorce [immediately], and [the *‘iddah*] due to the death [of the husband, immediately] follows the demise.

فإن لم تعلم بالطلاق أو الوفاة حتى مضت مدة العدة فقد
انقضت عدتها

If she did not know of the divorce or of the death [of her husband], until such [time] that the period of *‘iddah* elapsed, then her *‘iddah* has elapsed.[952]

والعدة في النكاح الفاسد عقيب التفريق بينهما، أو عزم الواطئ
على ترك وطئها

The ‘*iddah* due to an invalid marriage [immediately] follows the separation between the two [spouses], or [immediately after] the resolve of the one who has sexual intercourse to cease having sexual intercourse with her.[953]

On the Mourning of Widows

وعلى المبتوتة، والمتوفى عنها زوجها – إذا كانت بالغة مسلمة – الإحداد

[With regards to] the woman [in ‘*iddah*] who has been irrevocably divorced, and [she] who has been widowed, when she is major and Muslim,[954] she is to mourn.[955]

و الإحداد: أن تترك الطيب والزينة والدهن والكحل إلا من عذر، ولا تختضب بالحناء، ولا تلبس ثوباً مصبوغا بورس ولا زعفران

Mourning is to refrain from [wearing] perfumes, adornment,[956] oil and kohl, except for a [valid] excuse. She must not dye [herself] with henna, wear clothes coloured with *wars* (a yellow dye) or saffron.

ولا إحداد على كافرة، ولا صغيرة، وعلى الأمة الإحداد

There is no [obligation of] mourning on a non-Muslim woman or on a minor female, but mourning is [obligatory] on the slave-woman.

وليس في عدة النكاح الفاسد ولا في عدة أم الولد إحدادٌ

There is no mourning in the ‘*iddah* of an invalid marriage or in the ‘*iddah* of the mother of her master’s child (*umm al-walad*).

ولا ينبغي أن تخطب المعتدة، ولا بأس بالتعريض في الخطبة

The woman in ‘*iddah* ought not to be proposed to [in marriage], but there is no objection to making an allusive reference to a proposal.

ولا يجوز للمطلقة الرجعية والمبتوتة الخروج من بيتها ليلا ولا نهارا، والمتوفى عنها زوجها تخرج نهارا وبعض الليل، ولا تبيت في غير منزلها

Leaving the house is not permitted for the woman who has been divorced, revocably or irrevocably, by night or day, but the woman whose husband has died leaving her [as his widow] leaves the house during the day and [during] a portion of the night, but she does not spend the night anywhere but in her own house.

وعلى المعتدة أن تعتد في المنزل الذي يضاف إليها بالسكنى حال وقوع الفرقة، فإن كان نصيبها من دار الميت يكفيها فليس لها أن تخرج إلا من عذر وإن كان نصيبها من دار الميت لا يكفيها وأخرج الورثة من نصيبهم انتقلت

The woman in *'iddah* should spend her *'iddah* in the house which was ascribed to her for residence at the time of the separation.[957] Thus, if her share from the house of the deceased [husband] is enough for her, she is not to leave it except with a [valid] excuse. If, however, her share of the house of the deceased [husband] is not enough for her, and the heirs exclude [her] from their share[s],[958] then she moves [out].

ولا يجوز أن يسافر الزوج بالمطلقة الرجعية

It is not permitted for the husband to travel with the revocably divorced [wife].

فإذا طلق الرجل امرأته طلاقا بائنا ثم تزوجها في عدتها وطلقها قبل أن يدخل بها فعليه مهر كامل وعليها عدة مستقبلة، وقال محمد رحمه الله تعالى : لها نصف المهر وعليها إتمام العدة الأولى

When the husband divorced his wife with a final divorce, then later remarries her during her *'iddah*, and [again] divorces her prior to consummating the marriage with her, then he is obliged [to pay] the full dowry, and she is obliged a future *'iddah*.[959] Muḥammad, may Allah have mercy on him, however, said that she is entitled to a half dowry, and is [only] obliged to complete the first *'iddah*.

Proof of Lineage of the New-Born Child

و يثبت نسب ولد المطلقة الرجعية إذا جاءت به لسنتين أو أكثر
ما لم تقر بانقضاء عدتها، وإن جاءت به لأقل من سنتين ثبت
نسبه منه و بانت من زوجها، وإن جاءت به لأكثر من سنتين
ثبت نسبه وكانت رجعة

The paternity (*nasab*) of the child of the woman who has been revocably divorced is established when she bears him within two years or more, so long as she does not confirm the completion of her *'iddah*.[960] If she bore him in under two years, his paternity of him is established and she is finally divorced (*bā'inah*) from her husband. If she bore him after two years, his paternity is established and it is a rescission [of the divorce].

والمبتوتة يثبت نسب ولدها إذا جاءت به لأقل من سنتين،
وإذا جاءت به لتمام سنتين من يوم الفرقة لم يثبت نسبه إلا
أن يدعيه الزوج

[With regards to] the irrevocably divorced woman, the paternity of her child is established when she bears him in under two years. When she bears him on the completion of two years from the day of the separation [due to divorce], his paternity is not established unless the husband claims it.

و يثبت نسب ولد المتوفى عنها زوجها ما بين الوفاة و بين سنتين

The paternity of the child of the widow is established between the [time of] death [of her husband] and two years.[961]

و إذا اعترفت المعتدة بانقضاء عدتها ثم جاءت بولد لأقل من
ستة أشهر ثبت نسبه، و إن جاءت به لستة أشهر لم يثبت نسبه

When the woman in *'iddah* acknowledges the completion of her *'iddah*, then later bears a child in less than six months, his paternity is established. If, however, she bears him in six months [or more], his paternity is not established.[962]

و إذا ولدت المعتدة ولدا لم يثبت نسبه عند أبي حنيفة رحمه الله تعالى،
إلا أن يشهد بولادتها رجلان أو رجل وامرأتان، إلا أن يكون هناك حبل
ظاهر، أو اعتراف من قبل الزوج، فيثبت النسب من غير شهادة

When a woman in *‘iddah* bears a child, its paternity is not established,[963] according to Abū Ḥanīfah, may Allah have mercy on him, unless:

1. Two men testify to its birth, or one man and two women, unless the pregnancy is evident,[964] or
2. An acknowledgement from the husband’s side,[965] in which case paternity is established without testimony.

وقال أبو يوسف ومحمد رحمهما الله تعالى: يثبت في الجميع بشهادة امرأة واحدة

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that in all of the [above] cases, [paternity] is established with the testimony of [only] one woman.

وإذا تزوج الرجل امرأة فجاءت بولد لأقل من ستة أشهر منذ يوم تزوجها لم يثبت نسبه، وإن جاءت به لستة أشهر فصاعدا يثبت نسبه إن اعترف به الزوج أو سكت، وإن جحد الولادة يثبت بشهادة امرأة واحدة تشهد بالولادة

When a man marries a woman and she bears a child in less than six months from the day that he married her, his paternity of [the child] is not established, but if she bears him in [exactly] six months or more, his paternity is established, whether the husband acknowledges it or remains silent. If, however, he denies the birth [relating to himself], it is established with the testimony of one woman who testifies to the birth.[966]

وأكثر مدة الحمل سنتان، وأقله ستة أشهر

The longest period of pregnancy is two years and its shortest [period] is six months.

وإذا طلق الذمي الذمية فلا عدة عليها

When a *dhimmī* divorces a *dhimmī* woman, there is no *‘iddah* for her.[967]

وإذا تزوجت الحامل من الزنا جاز النكاح، ولا يطؤها حتى تضع حملها

If a woman, pregnant from adultery or fornication, marries, the marriage is permitted but [her husband] does not have sexual intercourse with her until she gives birth.

كتاب النفقات

NAFAQĀT – MAINTENANCE

النفقة واجبة للزوجة على زوجها، مسلمة كانت أو كافرة، إذا سلمت نفسها في منزله، فعليه نفقتها وكسوتها وسكناها، يعتبر ذلك بحالهما جميعا، موسرا كان الزوج أو معسرا

Maintenance (*nafaqah*) is a duty for the wife from her husband, whether she is a Muslim or disbeliever, when she surrenders herself in his house. So, there is due from him her maintenance, her clothing (*kiswah*) and her lodging, and all of that is determined according to the circumstances of [the spouses, whether] the husband is well-off or in [financial] difficulty.

فإن امتنعت من تسليم نفسها حتى يعطيها مهرها فلها النفقة

If she refuses to submit herself [to him] until he gives her dowry to her, then she is [still] entitled to maintenance.

وإن نشزت فلا نفقة لها حتى تعود إلى منزله

If she deserts [him], then she has no maintenance until she returns to his house.

وإن كانت صغيرة لا يستمتع بها فلا نفقة لها، وإن سلمت نفسها إليه

If she is a minor from whom he cannot derive pleasure [through sexual intercourse], then there is no maintenance for her, even if she does submit herself to him.

وإن كان الزوج صغيرا لا يقدر على الوطئ والمرأة كبيرة فلها النفقة من ماله

If the husband is a minor who is unable to have sexual intercourse, whilst the wife is adult, then she is [still] entitled to maintenance from his property.

وإذا طلق الرجل امرأته فلها النفقة والسكنى في عدتها، رجعيا كان أو بائنا

When a man divorces his wife, she is entitled to maintenance and lodgings during her *‘iddah*, be she revocably divorced or finally divorced.

ولا نفقة للمتوفى عنها زوجها

There is no maintenance for the woman whose husband has died leaving her [as his widow].[968]

وكل فرقة جاءت من قبل المرأة بمعصية فلا نفقة لها

[In the case of] all the [forms of] separation that take place on the part of the wife due to a wrongdoing, there is no maintenance for her.[969]

وإن طلقها ثم ارتدت سقطت نفقتها

If he divorces her,[970] then later she reneges [on Islam], her [right of] maintenance lapses.

وإن مكنت ابن زوجها من نفسها: فإن كان بعد الطلاق فلها النفقة، وإن كان قبل الطلاق فلا نفقة لها

If she empowers the son of her husband over herself:[971]

1. If that is after divorce, then she is [still] entitled to maintenance,
2. If it is before divorce, then there is no maintenance for her.

وإذا حبست المرأة في دينٍ أو غصبها رجل كرها فذهب بها أو حجت مع غير محرم فلا نفقة لها

When the wife is in custody because of debts, someone abducts her forcibly and takes her away, or she embarks on *ḥajj* with someone who is marriageable (a non-*maḥram*), she is not entitled to maintenance.

وإذا مرضت في منزل الزوج فلها النفقة

When she becomes ill in the house of her husband, then she is entitled to maintenance.

وتفرض على الزوج نفقة خادمها إذا كان موسرا، ولا تفرض لأكثر من خادم واحد

Maintenance for her servant is obligatory on the husband when [the husband] is well-off, and it is not obligatory for more than one servant.

وعليه أن يسكنها في دار منفردة ليس فيها أحد من أهله، إلا أن تختار ذلك

It is incumbent upon him to house her in a separate building in which none of his family [members live], unless she chooses that [to live with other family members].

وللزوج أن يمنع والديها وولدها من غيره وأهلها من الدخول عليها، ولا يمنعهم من النظر إليها ولا من كلامهم معها في أي وقت اختاروا

The husband may prevent her parents, her child from another [previous] husband and her family from visiting her. He may not, however, hinder them from looking at her nor from talking to her at any time they choose.

ومن أعسر بنفقة امرأته لم يفرق بينهما، ويقال لها: استديني عليه

Whoever experiences difficulty in the [payment of] maintenance to his wife, they are not separated, but it is said to her, “Take a debt against him.”[972]

وإذا غاب الرجل وله مال في يد رجل يعترف به وبالزوجية فرض القاضي في ذلك المال نفقة زوجة الغائب وأولاده الصغار ووالديه، ويأخذ منها كفيلا بها، ولا يقضي بنفقة في مال الغائب إلا لهؤلاء

When a man is absent and he has some property in the possession of a man who acknowledges it and [also acknowledges] the marriage, the judge imposes the maintenance of the wife of the missing man on that property, and of his minor children and his parents. [The judge] takes from her a guarantor (*kafīl*) for her, and he does not decide maintenance in the property of the missing person [for anyone] except for these [people].

وإذا قضى القاضي لها بنفقة الإعسار ثم أيسر فخاصمته تمم لها نفقة الموسر

When the judge has adjudicated for her the maintenance of someone in financial difficulty, then later, [the husband] becomes more prosperous and she disputes [an increase in her maintenance money] with him, [the judge] completes the maintenance of someone in financial ease for her.[973]

وإذا مضت مدة لم ينفق الزوج عليها وطالبته بذلك فلا شيء لها، إلا أن يكون القاضي فرض لها نفقة، أو صالحت الزوج على مقدارها، فيقضي لها بنفقة ما مضى

When a period elapses wherein the husband has not given maintenance to her and she demands that from him, she is entitled to nothing unless the judge had prescribed some maintenance for her, or she had made an agreement with the husband regarding its amount, and then [the judge] adjudicates for her regarding the maintenance of what [period] has passed [without maintenance].[974]

فإن مات الزوج بعد ما قضي عليه بالنفقة ومضت شهور سقطت النفقة

If the husband dies after what was adjudicated against him regarding the maintenance, and a few months have passed [after his death], the [payment of] maintenance ceases.

وإن أسلفها نفقة سنة ثم مات لم يسترجع منها بشيء، وقال محمد رحمه الله تعالى: يحتسب لها نفقة ما مضى وما بقي للزوج

If he gives her advance maintenance for a year, then later dies, nothing is taken back from her, but Muḥammad, may Allah have mercy on him, said that the maintenance of whatever has passed is reckoned up as hers, and whatever remains is for the husband.[975]

وإذا تزوج العبد حرة فنفقتها دين عليه يباع فيها

When a slave marries a free woman, her maintenance is a debt upon him, for which he [may be] sold.

وإذا تزوج الرجل أمة فبوأها مولاها معه منزلا فعليه النفقة،
وإن لم يبوئها فلا نفقة لها عليه

When a man marries a slave-woman, and her master lodges her in a house with him [the husband], then her maintenance is due upon [the husband], but if he does not lodge her, then there is no maintenance for her due from him [the husband].

ونفقة الأولاد الصغار على الأب، لا يشاركه فيها أحد، كما لا
يشاركه في نفقة الزوجة أحد

The maintenance of minor children is due from the father; no-one shares with him in that, just as no-one shares with him in the maintenance of the wife.

فإن كان الصغير رضيعا فليس على أمه أن ترضعه، ويستأجر
له الأب من ترضعه عندها، فإن استأجرها وهي زوجته أو
معتدته لترضع ولدها لم يجز، وإن انقضت عدتها فاستأجرها
على إرضاعه جاز

If the minor is breastfeeding, it is not incumbent upon the mother to breastfeed him, and the father hires someone for him who breastfeeds him with her. If he hires her to breastfeed [his wife's] child and she [the breastfeeding woman] is [another] wife of his, or a divorced wife of his in *'iddah*, it is not permitted. It is permitted for him to hire [the divorced wife] to breastfeed [the child] when her *'iddah* has ended.

فإن قال الأب لا أستأجرها وجاء بغيرها فرضيت الأم بمثل
أجرة الأجنبية كانت الأم أحق به، وإن التمست زيادة لم يجبر
الزوج عليها

If the father says, "I will not hire [the mother of the child]," and he brings someone else, and the mother consents to the same wages as that of the stranger,[976] the mother is more deserving to [breastfeed], but if she asks for more, the husband is not compelled to pay it.[977]

ونفقة الصغير واجبة على أبيه وإن خالفه في دينه، كما تجب نفقة الزوجة على الزوج وإن خالفته في دينه

The maintenance of a minor is obligatory upon his father even if he is of a different religion, just as the maintenance of the wife is obligatory upon the husband even if she is of a different religion.

باب الحضانة

CUSTODY

وإذا وقعت الفرقة بين الزوجين فالأم أحق بالولد، فإن لم تكن الأم فأم الأم أولى من أم الأب، فإذا لم يكن له أم الأم فأم الأب أولى من الأخوات، فإن لم تكن جدة فالأخوات أولى من العمات والخالات

If separation between the spouses occurs, the mother has more right to [custody of] the child. If the mother is not there, then the maternal grandmother has more right than the paternal grandmother. If [the child] does not have a maternal grandmother, then the paternal grandmother has more right than sisters. If, there is no grandmother, then sisters have more right than paternal aunts and maternal aunts.

وتقدم الأخت من الأب والأم، ثم الأخت من الأم، ثم الأخت من الأب، ثم الخالات أولى من العمات، وينزلن كما نزل الأخوات، ثم العمات ينزلن كذلك

The full sister has priority [to the custody of the child], then the uterine sister, then the consanguine sister, then maternal aunts have more right than paternal aunts. They descend [in order of priority] just as the sisters descend.[978] Then paternal aunts [have custodial rights of the child and they] descend, likewise.

وكل من تزوجت من هؤلاء سقط حقها في الحضانة إلا الجدة إذا كان زوجها الجد

Out of these [women], whoever gets married, her custodial rights lapse, except the maternal grandmother when her husband is the paternal

grandfather.

فإن لم تكن للصبي امرأة من أهله واختصم فيه الرجال فأولاهم به أقربهم تعصيبا

If the child has no woman from his family [for his custodianship] and the men dispute over him [regarding custodial rights], then the one who has the most right is the closest of them in agnatic relationship (*'aṣabah*).[979]

والأم والجدة أحق بالغلام حتى يأكل وحده ويشرب وحده ويلبس وحده ويستنجي وحده، وبالجارية حتى تحيض

The mother and the maternal grandmother have more right to the [custody of the] boy, until he can eat by himself, drink by himself, dress himself and wash himself after using the toilet, and of the girl until she begins to menstruate.

ومن سوى الأم والجدة أحق بالجارية حتى تبلغ حداً تشتهي

Women other than the mother and the maternal grandmother, have more right to [custody of the] girl until she reaches the age of [sexual] desire.

والأمة إذا أعتقها مولاها وأم الولد إذا أعتقت فهي في الولد كالحرة

[With regards to] the slave-woman, when her master sets her free, and the mother of her master's child (*umm al-walad*), when she is set free, is with respect to the child like a free woman.[980]

وليس للأمة وأم الولد قبل العتق حق في الولد

Before being set free, the slave-woman and the mother of her master's child (*umm al-walad*) have no right to [the custody of] the child.

والذمية أحق بولدها المسلم ما لم يعقل الأديان أو يخاف عليه أن يألف الكفر

The woman of the People of the Book living under Islamic governance (*dhimmī*) has more right to her Muslim child as long as he has not come to comprehend the religions, or it is feared for him that he becomes intimate

with disbelief (*kufr*).

و إذا أرادت المطلقة أن تخرج بولدها من المصر فليس لها ذلك
إلا أن تخرجه إلى وطنها وقد كان الزوج تزوجها فيه

It is not permitted for the divorced woman to decide to take her child out of the city, unless she takes him to her [own] country, and it was [that country] in which the husband had married her.

وعلى الرجل أن ينفق على أبويه وأجداده وجداته إذا كانوا
فقراء و إن خالفوه في دينه

It is incumbent upon the man to spend upon his parents, his grandfathers and his grandmothers when they are poor, even if they are of a different religion.

ولا تجب النفقة مع اختلاف الدين إلا للزوجة والأبوين
والأجداد والجدات والولد وولد الولد

Maintenance is not obligatory along with difference in religion, except for the wife, parents, grandfathers, grandmothers, the child and grandchild.

ولا يشارك الولد في نفقة أبويه أحد

No-one shares with the child in the maintenance of his parents.

والنفقة واجبة لكل ذي رحم محرم منه إذا كان صغيرا فقيرا، أو
كانت امرأة بالغة فقيرة، أو كان ذكرا زمنا أو أعمى فقيرا

Maintenance is incumbent [to be given] to any un-marriageable relative (*dhū raḥm maḥram*) of his when [that un-marriageable relative] is:

1. A minor and needy,
2. [When] she is major and needy,
3. A chronically ill[981] male, or
4. A needy blind male.

ويجب ذلك على مقدار الميراث

That [maintenance] is incumbent according to the ratio of the [shares] of inheritance.

وتجب نفقة الابنة البالغة والابن الزمن على أبويه أثلاثا: على الأب الثلثان، وعلى الأم الثلث، ولا تجب نفقتهم مع اختلاف الدين

Maintenance of a major daughter and [of] the chronically ill son is incumbent upon their parents in thirds; from the father, two-thirds, and one-third from the mother, but their maintenance is not obligatory if there is difference in religion.

ولا تجب على الفقير

[Maintenance] is not incumbent upon the needy person.

وإذا كان للابن الغائب مال قضي عليه بنفقة أبويه، وإن باع أبواه متاعه في نفقتهما جاز عند أبي حنيفة رحمه الله تعالى، وإن باع العقار لم يجز، وإن كان للابن الغائب مال في يد أبويه فأنفقا منه لم يضمنا، وإن كان له مال في يد أجنبي فأنفق عليهما بغير إذن القاضي ضمن

When there is property belonging to an absent son, the maintenance of his parents is adjudicated to come from it. If his parents sell his [movable] property for their maintenance, it is permitted, according to Abū Ḥanīfah, may Allah have mercy on him, but if they sell his real estate, that is not permitted. If there is property belonging to an absent son in the care of his parents, and they spend of it, they are not liable [to recompense him], and if there is property belonging to him, which is in the care of a non-relative, and he spends it on [the parents] without the authorisation of the judge, [the non-relative] is liable [to recompense him].

وإذا قضى القاضي للولد والوالدين ولذوي الأرحام بالنفقة فمضت مدة سقطت، إلا أن يأذن لهم القاضي في الاستدانة عليه

When the judge adjudicates maintenance for the child, the parents and for un-marriageable relatives (*dhu raḥm maḥrams*), and a period [of time] passes [with non-payment], it lapses [as an obligation], unless the judge authorises them to buy on credit against him.

وعلى المولى أن ينفق على عبده وأمته، فإن امتنع من ذلك وكان لهما كسب اكتسبا وأنفقا منه ، وإن لم يكن لهما كسب أجبر المولى على بيعهما

It is [incumbent] upon the master to spend upon his slave and his slave-woman. If he refuses to do so and they have some earnings then they earn and spend out of [those earnings], but if they have no earnings, [then] the master is compelled to sell them.

كتاب العتاق

‘ITĀQ – SETTING FREE[982]

العتق يقع من الحر البالغ العاقل في ملكه، فإذا قال لعبده أو أمته «أنت حر، أو معتَق، أو عتيق، أو محرَّرٌ، أو قد حررتك، أو أعتقتك» فقد عتق، نوى المولى العتق أو لم ينو

The adult, sane free man’s setting free takes effect in his property. Thus, if he says to his slave, or to his slave-woman:

1. “You are free,”
2. “…set free,”
3. “…*‘atīq* (set free),”
4. “…freed,”
5. “I have freed you,” or
6. “I have set you free,”

then he [or she] is free, whether the master intended setting [them] free or not.[983]

وكذلك إذا قال «رأسك حرٌّ، أو رقبتك، أو بدنك» أو قال لأمته «فرجك حرٌّ»

Likewise, when he says:

1. “Your head is free,”
2. “Your neck…,”
3. “Your body…,” or
4. He says to his slave-woman, “Your vagina (*farj*) is free.”

وإن قال «لا ملك لي عليك» ونوى بذلك الحرية عتق، وإن لم ينو لم يعتق، وكذلك جميع كنايات العتق

If [the master] says, “I have no ownership over you,” and by that he

intends freedom, [the slave or slave-woman] is set free, but if [the master] does not intend [freedom, then] they are not set free. Likewise, all statements that imply setting free [depend on the intention].

وإن قال «لا سلطان لي عليك» ونوى به العتق لم يعتق

If he says, "I have no authority over you," and he intends setting free by that, [the slave or slave-woman] is not set free.

وإذا قال: «هذا ابني» وثبت على ذلك. أو قال «هذا مولاي»، أو «يا مولاي» عتق، وإن قال «يا ابني» أو «يا أخي» لم يعتق

When [the master] says, "This is my son" and sticks to that [statement], or he says, "This is my freed slave (*mawlā*)," or "O my freed slave (*mawlā*)," [then the slave] is set free. If, however, [the master] says [to the slave], "O my son," or "O my brother," he is not set free.

وإن قال لغلام لا يولد مثله لمثله «هذا ابني» عتق عليه عند أبي حنيفة رحمه الله تعالى، و عندهما رحمهما الله تعالى لا يعتق

If he says, regarding a slave the like of whom could not be born to someone like him,[984] "This is my son," he is set free, according to Abū Ḥanīfah, may Allah have mercy on him, but according to Abū Yūsuf and Muḥammad, may Allah have mercy on them, he is not set free.

وإن قال لأمته «أنت طالقٌ» ينوي به الحرية لم تعتق

If he says to his slave-woman, "You are divorced," intending by that freedom, she is not set free.

وإن قال لعبده «أنت مثل الحر» لم يعتق، وإن قال «ما أنت إلا حرٌّ» عتق عليه

If he says to his slave, "You are like a free man," he is not set free, but if he says, "You are nothing but a free man," he is set free.

وإذا ملك الرجل ذا رحم محرم منه عتق عليه

When a man acquires ownership of an un-marriageable relative (*dhū raḥm maḥram*) [as a slave], he is set free [unconditionally].[985]

و إذا أعتق المولى بعض عبده عتق عليه ذلك البعض، و يسعى في بقية قيمته لمولاه، عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يعتق كله

When a master sets a part of his slave free, he is set free in that part, and he works for the remainder of his [own] value for the master, according to Abū Ḥanīfah, may Allah have mercy on him.[986] They,[987] may Allah have mercy on them, however, said that he is set completely free.

و إذا كان العبد بين شريكين فأعتق أحدهما نصيبه عتق، فإن كان موسرا فشريكه بالخيار: إن شاء أعتق، و إن شاء ضمن شريكه قيمة نصيبه، و إن شاء استسعى العبد

When the slave is [shared] between two partners and one of the two sets his [own] share [of the slave] free, he is free. If [the partner who set him free] is [financially] well-off, then his partner has a choice:

1. If he wants, he may set [the slave] free,
2. If he wants, he may take compensation from his partner according to the value of his share, or
3. If he wants, he may demand work from the slave.

و إن كان المعتق معسرا فالشريك بالخيار: إن شاء أعتق نصيبه، و إن شاء استسعى العبد، و هذا عند أبي حنيفة رحمه الله تعالى

If, however, [the partner] who set him free is in difficult [financial] circumstances, then the partner has a choice:

1. If he wants, he may set his [own] share [of the slave] free, or
2. If he wants, he may demand work from the slave.

This is according to Abū Ḥanīfah, may Allah have mercy on him.

وقال أبو يوسف ومحمد رحمهما الله تعالى: ليس له إلا الضمان مع اليسار، والسعاية مع الإعسار

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that [the partner who did not set the slave free] is not entitled to anything except compensation if [the partner who set the slave free is] well-off, and work

[from the slave] if [the partner who set the slave free is] in [financial] difficulty.

وإذا اشترى رجلان ابن أحدهما عتق نصيب الأب، ولا ضمان عليه، وكذلك إذا ورثاه والشريك بالخيار: إن شاء أعتق نصيبه، وإن شاء استسعى العبد

If two men buy the son of either of the two, and likewise if they inherit him, the share of the father is set free and there is no compensation for him, but the [other] partner has a choice:

1. If he wants, he may set his [own] share free, or
2. If he wants he may demand work from the slave.

وإذا شهد كل واحدٍ من الشريكين على الآخر بالحرية سعى العبد لكل واحدٍ منهما في نصيبه، موسرين كانا أو معسرين عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: إذا كانا موسرين فلا سعاية، وإن كانا معسرين سعى لهما، وإن كان أحدهما موسرا والآخر معسرا سعى للموسر ولم يسع للمعسر

When each of the [two] partners testifies against the other regarding the freedom [of the slave],[988] the slave works for both of them, according to their share [in him], be they [financially] well-off or in difficulty, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[989] may Allah have mercy on them, said that:

1. When both of them are well-off, there is no work [on the slave], but
2. If they are both in [financial] difficulty, he works for both of them, and
3. If one of the two is well-off and the other is in difficulty, [the slave] works for the one who is well-off and not for the one who is in [financial] difficulty.

ومن أعتق عبده لوجه الله تعالى أو للشيطان أو للصنم عتق

Whoever sets his slave free for the Face of Allah, exalted is He, or [even if he sets him free] for Shayṭān or for an idol, he is set free.

وعتق المكره والسكران واقع

The liberation [of a slave] by a coerced or intoxicated person takes effect.

و إذا أضاف العتق إلى ملك أو شرط صح كما يصح في الطلاق

When one attaches the act of setting free to ownership or [to] a condition, it is valid, just as it is valid in [the case of] divorce.

و إذا خرج عبد الحربي من دار الحرب إلينا مسلما عتق

When the slave of a belligerent (*ḥarbī*) leaves enemy territory (*dār al-ḥarb*) [to come] to us as a Muslim, he is set free.

و إذا أعتق جاريةً حاملا عتقت و عتق حملها، و إن أعتق الحمل خاصة عتق ولم تعتق الأم

When someone sets a pregnant slave-woman free, she is set free and her foetus is [also] free, but if he sets the foetus free only, it is set free but the mother is not set free.

و إذا أعتق عبده على مال فقبل العبد عتق فإذا قبل صار حرا ولزمه المال، ولو قال «إن أديت إلي ألفا فأنت حر» صح و لزمه المال وصار مأذونا، فإن أحضر المال أجبر الحاكم المولى على قبضه وعتق العبد

When someone sets his [own] slave free against property and the slave accepts, he is set free. Thus, when he accepts, he becomes a free man and the [payment of] property is binding upon him. If [the master] says, "If you pay me a thousand, you will be free," it is valid; the [payment of] property becomes binding upon [the slave, if he accepts the deal], and he becomes an authorised slave (*ma'dhūn*). Thus, if he presents the property, the judge (*ḥākim*) compels the master to take it and set the slave free.

وولد الأمة من مولاها حر، وولدها من زوجها مملوك لسيدها، وولد الحرة من العبد حر

The child of the slave-woman from her master[990] is [born] free, but her child from her husband is owned by her master and the child of the free

woman from a slave[991] is [born] free.

باب التدبير

TADBĪR – SETTING FREE A SLAVE ON THE DEATH OF THE MASTER

إذا قال المولى لمملوكه «إذا مت فأنت حرٌّ، أو أنت حرٌّ عن دبر
مني، أو أنت مدبَّرٌ، أو قد دبرتك» فقد صار مدبرا : لا يجوز بيعه،
ولا هبته، وللمولى أن يستخدمه و يؤاجره

When the master says to his slave [or slave-woman]:

1. “When I die, you will be free,”
2. “You are free after my passing away,”
3. “You are *mudabbar*,” or
4. “I have made a *mudabbar* of you,”

he has become a *mudabbar*; selling him and giving him away as a gift is not allowed,[992] but the master may seek his services and hire him out.

و إن كانت أمة فله أن يطأها، وله أن يزوجها

If she is a slave-woman, he may have sexual intercourse with her and he may [also] marry her [to someone].

و إذا مات المولى عتق المدبر من ثلث ماله إن خرج من الثلث،
فإن لم يكن له مال غيره يسعى في ثلثي قيمته، فإن كان على المولى
دين يسعى في جميع قيمته لغرمائه

When the master dies, the *mudabbar* is set free from a third of his property, if he can be extracted from the third.[993] If, however, [the deceased master] has no property other than [the *mudabbar*], he works for two-thirds of his [own] value.[994] If the master was in debt, [the *mudabbar*] works for [the amount of] his [own] full value, for the creditors of [the master].

وولد المدبرة مدبر

The child of the woman who is to be set free on the death of her master (*mudabbarah*) is [also] set free on the death of the master (*mudabbar*).

فإن علق التدبير بموته على صفة – مثل أن يقول: إن مت من مرضي هذا، أو في سفري هذا، أو من مرض كذا – فليس بمدبر، ويجوز بيعه

If [the master] attaches the act of setting the slave free on his death (*tadbīr*) to a description, for example, he says:

1. "If I die due to this illness of mine,"
2. "…in this journey of mine," or
3. "…in such-and-such an illness,"

then he is not a [real] *mudabbar*, and he can be sold.

فإن مات المولى على الصفة التي ذكرها عتق كما يعتق المدبر

If the master dies according to the description which he mentioned, [the slave] is set free, just like a slave set free on the death of his master would be set free.

باب الاستيلاد

ISTĪLĀD – BEARING THE CHILD OF THE MASTER

إذا ولدت الأمة من مولاها فقد صارت أم ولد له، لا يجوز له بيعها، ولا تمليكها، وله وطؤها واستخدامها وإجارتها وتزويجها

When a slave-woman gives birth [to a child] from her master, she becomes the mother of his child (*umm al-walad*); it is not permitted for him to sell her nor to transfer her in ownership.[995] He may, however, have sexual intercourse with her, avail of her services, hire her out and marry her away.

ولا يثبت نسب ولدها إلا أن يعترف به المولى، فإن جاءت بولد بعد ذلك ثبت نسبه منه بغير إقرار، فإن نفاه انتفى بقوله

The paternity of her child is not established unless the master acknowledges it. Then, if she bears a child after that,[996] his paternity of it is established without acknowledgement. And, if he denies it, it is [legally] negated by his statement [of denial].

وإن زوجها فجاءت بولد فهو في حكم أمه

If he marries her away and she bears a child, then it comes under the [same] ruling as its mother.

وإذا مات المولى عتقت من جميع المال، ولا تلزمها السعاية للغرماء إن كان على المولى دين

When the master dies, she is set free from all the property.[997] If the master was a debtor, working for the creditors is not binding upon her.

وإذا وطئ الرجل أمة غيره بنكاح فولدت منه ثم ملكها صارت أم ولد له

When a man has sexual intercourse with the slave-woman of someone else, in marriage, and she gives birth from him, then later he acquires ownership of her, she becomes an *umm al-walad* to him.

وإذا وطئ الأب جارية ابنه فجاءت بولد فادعاه ثبت نسبه وصارت أم ولد له: وعليه قيمتها، وليس عليه عقرها ولا قيمة ولدها

When a father has sexual intercourse with his son's slave-woman and she bears a child, and he claims it, his paternity is established and she becomes his *umm al-walad*; her price will be due upon him, but [the payment of] her compensatory dowry (*'uqr*)[998] or the price of her child will not be due from him.

وإن وطئ أب الأب مع بقاء الأب لم يثبت النسب منه، فإن كان الأب ميتا يثبت النسب من الجد كما يثبت النسب من الأب

If the paternal grandfather [of the master] has sexual intercourse with her, with the existence of the father [of the master], his paternity is not established, but if the father is deceased, the paternal grandfather's lineage is established, just like the father's paternity.

وإن كانت الجارية بين شريكين فجاءت بولد فادعاه أحدهما
ثبت نسبه منه، وصارت أم ولد له، وعليه نصف عقرها ونصف
قيمتها، وليس عليه شيء من قيمة ولدها، فإن ادعياه معا ثبت نسبه
منهما، وكانت الأمة أم ولد لهما، وعلى كل واحد منهما نصف
العقر تقاصّا بماله على الآخر، ويرث الابن من كل واحد منهما
ميراث ابن كامل، وهما يرثان منه ميراث أب واحد

If the slave-woman is [shared] between two partners, and she bears a child:

1. If either of the two claims it, his paternity is established, she becomes his *umm al-walad*, and half her compensatory dowry and half her value is due [as payment] from him, but there is nothing due from him [as liability] for the value of her child;
2. If both of [the partners] claim it together, paternity is established to both of them, and the slave-woman becomes an *umm al-walad* to them both, each of the two is [liable for] half her compensatory dowry, they clear their property for the other equally.[999] The son inherits from each of the two the full inheritance [share] of a son,[1000] both of them inherit from him the [equivalent] inheritance of one father.[1001]

وإذا وطئ المولى جارية مكاتبه فجاءت بولد فادعاه: فإن صدقه
المكاتب ثبت نسبه منه، وكان عليه عقرها وقيمة ولدها، ولا تصير
أم ولد له، وإن كذبه المكاتب في النسب لم يثبت نسبه منه

When the master has sexual intercourse with the slave-woman of his slave who has contracted with him to purchase his freedom (*mukātab*), and she bears a child, and he claims it:

1. If the slave who has contracted to purchase his freedom (*mukātab*) confirms him [in that], his [the master's] paternity is established and [the payment of] her compensatory dowry is due from him as well as the value of her child, but she does not become his *umm al-walad*;
2. If the slave who has contracted to purchase his freedom (*mukātab*) denies his [the master's] paternity, his paternity of him [the child] is not established.

كتاب المكاتب

AL-MUKĀTAB – THE SLAVE WHO CONTRACTS TO PURCHASE HIS FREEDOM

و إذا كاتب المولى عبده أو أمته على مال شرطه عليه وقبل العبد
ذلك العقد صار مكاتبا

When a master makes his slave or his slave-woman a *mukātab* upon [the payment of] property which he stipulates for them, and the slave [or slave-woman] accepts that contract,[1002] he [or she] becomes a *mukātab*.[1003],[1004]

ويجوز أن يشترط المال حالا و يجوز مؤجلا ومنجما

It is permitted to stipulate the [payment of] the property immediately, it is [also] permitted to delay it, and [to pay it] in instalments.

وتجوز كتابة العبد الصغير إذا كان يعقل الشراء و البيع

The contract for a minor slave to purchase his freedom is permitted when he comprehends [the acts of] buying and selling.

و إذا صحت الكتابة خرج المكاتب عن يد المولى، ولم يخرج
من ملكه، فيجوز له البيع والشراء والسفر، ولا يجوز له التزوج
إلا أن يأذن له المولى، ولا يهب ولا يتصدق إلا بالشيء اليسير، ولا
يتكفل، فإن ولد له ولد من أمة له دخل في كتابته، وكان حكمه
مثل حكم أبيه، وكسبه له

When the contract for the slave to purchase his freedom (*kitābah*) is valid, the slave who has contracted to purchase his freedom (*mukātab*) goes out of the possession of the master, but does not leave his ownership. It is permitted for him to sell, buy and travel, but it is not permitted for him to marry unless the master gives him permission. He may not give anything as a gift or in charity except something slight, and neither is he to act as a surety [for

anyone]. If a child is born to him from his slave-woman, it enters into his contract to purchase his freedom (*kitābah*); its [legal] ruling is just like the ruling of its father and its earnings are [also] his.

فإن زوج المولى عبده من أمته ثم كاتبها فولدت منه ولدا دخل في كتابتها وكان كسبه لها

If a master marries off his slave to his [own] slave-woman, then later gives them both contracts to purchase their freedom,[1005] and she bears him a child, it enters her contract to purchase her freedom, and its earnings are hers.

وإن وطئ المولى مكاتبته لزمه العقر، وإن جنى عليها أو على ولدها لزمته الجناية، وإن أتلف مالا لها غرمه

If the master has sexual intercourse with his slave-woman who has contracted to purchase her freedom (*mukātabah*), the compensatory dowry (*'uqr*) is binding upon him. If he harms her or her child, the [payment of] damages [or retaliation against him] is binding upon him,[1006] and if he destroys any of her property, he owes it [to her].[1007]

وإذا اشترى المكاتب أباه أو ابنه دخل في كتابته، وإن اشترى أم ولده مع ولدها دخل ولدها في الكتابة ولم يجز بيعها، وإن اشترى ذا رحم محرم منه لا ولاد له لم يدخل في كتابته عند أبي حنيفة رحمه الله تعالى

When the slave who has contracted to purchase his freedom buys his [own] father, or his [own] son, they are comprised in his contract to purchase his freedom. If he buys the slave-woman who is the mother of his child (*umm al-walad*) together with her child, her child is comprised in the contract to purchase his freedom, and selling her is not permitted for him. If he buys an un-marriageable relative (*dhū raḥm maḥram*) who has no relationship of birth[1008] to him, according to Abū Ḥanīfah, may Allah have mercy on him, they are not comprised in his contract to purchase his freedom.

وإذا عجز المكاتب عن نجم نظر الحاكم في حاله، فإن كان له دين يقتضيه، أو مال يقدم عليه، لم يعجل بتعجيزه، وانتظر

عليه اليومين أوالثلاثة، و إن لم يكن له وجه وطلب المولى تعجيزه عجّزه الحاكم وفسخ الكتابة

When the slave who has contracted to purchase his freedom (*mukātab*) is unable [to pay] an instalment, the judge (*ḥākim*) should look into his circumstances:

1. If he is owed [a] debt whose discharge he is seeking, or some property is to come his way, then [the *ḥākim*] should not hurry in declaring him insolvent (*‘ājiz*), but allow him two or three days;
2. If he has no resort [to anything] and the master demands declaration of his insolvency, the judge declares him insolvent and repeals the contract for the slave to purchase his freedom (*kitābah*).

وقال أبو يوسف رحمه الله تعالى: لا يعجزه حتى يتوالى عليه نجمان: و إذا عجز المكاتب عاد إلى حكم الرق، وكان ما في يده من الاكتساب لمولاه

Abū Yūsuf, may Allah have mercy on him, said, “He should not declare him insolvent until two successive instalments are due from him.”

When the slave who has contracted to purchase his freedom (*mukātab*) becomes insolvent, he returns to the [legal] ruling of slavehood, and whatever earnings he has in his [own] possession are his master’s.

فإن مات المكاتب وله مال لم تنفسخ الكتابة وقضى ما عليه من ماله وحكم بعتقه في آخر جزء من أجزاء حياته، و ما بقي فهو ميراث لورثته و يعتق أولاده

When the the slave who has contracted to purchase his freedom dies and he has some property, the contract to purchase his freedom is not rescinded. Whatever is due from him is discharged from his property and it is ruled that he was set free during the last part of his life.[1009] Whatever remains is inheritance for his heirs,[1010] and his children are set free.

و إن لم يترك وفاء وترك ولدا مولودا في الكتابة سعى في كتابة أبيه على نجومه، فإذا أدى حكمنا بعتق أبيه قبل موته وعتق الولد

If he did not leave [enough] to settle [the contract], and he leaves behind

one child who was born during the [period of] the contract to purchase his freedom, he is to work for his father's contract's instalments. So, when he has paid [the complete dues], we rule the setting free of his father before his death, and the child is [also] set free.

و إن ترك ولدا مشترى في الكتابة قيل له: إما أن تؤدي الكتابة حالا، و إلا رددت في الرق

If he leaves a child whom he had bought during the [period of] the contract to purchase his freedom, it is said to him, "Either you pay the contract [dues] to purchase [your] freedom immediately, or you will be returned to slavery."

و إذا كاتب المسلم عبده على خمر أو خنزير أو على قيمة نفسه فالكتابة فاسدة، فإن أدى الخمر والخنزير عتق ولزمه أن يسعى في قيمته ولا ينقص من المسمى و يزاد عليه

When a Muslim makes a contract for his slave to purchase his freedom with:

1. Wine,
2. Swine, or
3. For the value of the slave [himself],

the contract to purchase his freedom is invalid. But, if [the slave] furnishes the wine, or swine, he is set free and it is binding upon him to work for his value which shall not decrease from the specified [amount], but it may increase.[1011]

و إن كاتبه على حيوان غير موصوف فالكتابة جائزة

If he gives him a contract to purchase his freedom for an unspecified animal, the contract (*kitābah*) is permitted.

و إن كاتبه على ثوب لم يسم جنسه لم يجز و إن أداه لم يعتق

If he gives him a contract to purchase his freedom for a garment, the type of which is not mentioned [in the contract], it is not permitted, and [even] if he furnishes it, he is not set free.

و إن كاتب عبديه كتابة واحدة بألف درهم: إن أديا عتقا، و إن عجزا ردا إلى الرق

If he gives two of his slaves a contract to purchase their freedom in one contract[1012] for a thousand dirhams, if both of them pay, they are both set free, but if both of them are insolvent, they are both returned to slavehood.[1013]

و إن كاتبهما على أن كل واحد منهما ضامن عن الآخر جازت الكتابة، وأيهما أدى عتقا و يرجع على شريكه بنصف ما أدي

If he gives them a contract to purchase their freedom on [the condition] that each of them is responsible for the other, the contract is permitted; whichever of the two pays, they are both set free, and he resorts to his partner for a half of what he [himself] has paid.

و إذا أعتق المولى مكاتبه عتق بإعتاقه، وسقط عنه مال الكتابة

When a master sets his slave who has contracted to purchase his freedom free, he is set free with [the master's act of] manumitting [him], and the [payment of the] property of the contract is waived.

و إذا مات مولى المكاتب لم تنفسخ الكتابة

When the master of the slave who has contracted to purchase his freedom dies, the contract for the slave to purchase his freedom is not rescinded.

وقيل له: أد المال إلى ورثة المولى على نجومه، فإن أعتقه أحد الورثة لم ينفذ عتقه، و إن أعتقوه جميعا عتق، وسقط عنه مال الكتابة

And it is said to [the slave who has contracted to purchase his freedom], "Pay the property to the heirs of the master according to its instalments." If any of the heirs set him free, his being set free is not executed, but if all of them set him free, he is set free and the [payment of] the property of the contract is waived.

On the *Umm al-Walad and Mudabbar being Mukātab*

و إذا كاتب المولى أم ولد جاز، فإن مات المولى سقط عنها مال الكتابة

It is permitted if the master gives a slave-woman who is the mother of his child (*umm al-walad*) a contract to purchase her freedom. Then, if the master dies, the property of the contract is waived.[1014]

و إن ولدت مكاتبته منه فهي بالخيار: إن شاءت مضت على الكتابة، و إن شاءت عجزت نفسها وصارت أم ولد له

If his slave-woman with the contract to purchase her freedom gives birth by him, then she has an option:

1. If she wants she may continue with the contract to purchase her freedom, or
2. She may declare herself insolvent and become a slave-woman who is the mother of his child (*umm al-walad*).

و إن كاتب مدبرته جاز، فإن مات المولى ولا مال له غيرها كانت بالخيار بين أن تسعى في ثلثي قيمتها أو جميع مال الكتابة

If he gives his female slave who is to be freed upon his death (*mudabbarah*) a contract to purchase her freedom, it is permitted. Then, if the master dies and he has no property other than her, [then] she has an option between:

1. Working for two-thirds of her [own] value, or
2. [For] the full property of the contract to purchase her freedom (kitābah).

و إن دبر مكاتبته صح التدبير ولها الخيار: إن شاءت مضت على الكتابة، و إن شاءت عجزت نفسها وصارت مدبرة

If he decides that his slave-woman who has contracted to purchase her freedom is to be set free after his death (*mudabbarah*), the act of setting her free after his death (*tadbīr*) is valid, and she has the option:

1. If she wants she may continue upon the contract to purchase her freedom, or

If she wants she may declare herself insolvent and become one who is

2. set free after his death (*mudabbarah*).

فإن مضت على كتابتها فمات المولى ولا مال له فهي بالخيار: إن شاءت سعت في ثلثي مال الكتابة أو ثلثي قيمتها عند أبي حنيفة رحمه الله تعالى

Then, if she remains on her contract to purchase her freedom and the master dies without property, she has an option:

1. If she wants, she may work for two-thirds of the sum named in the contract to purchase her freedom, or
2. Two-thirds of her [own] value, according to Abū Ḥanīfah, may Allah have mercy on him.

و إذا أعتق المكاتب عبده على مال لم يجز، و إن وهب على عوض لم يصح، و إن كاتب عبده جاز، فإن أدى الثاني قبل أن يعتق الأول فولاؤه للمولى الأول، و إن أدى الثاني بعد عتق المكاتب الأول فولاؤه له

It is not permitted for a slave who has contracted to purchase his freedom to set his [own] slave free upon [the payment of] property, and when he gifts [him] in exchange for a consideration, it is not valid. It is permitted if [the slave who has contracted to purchase his freedom] gives his own slave a contract to purchase his freedom. Then, if the second [slave] pays prior to the first being set free, his clientage (*walā’*)[1015] is for the first master, but if the second [slave] pays after the first slave who has contracted to purchase his freedom (*mukātab*) is set free, then his clientage (*walā’*) is for [the first].

كتاب الولاء

WALĀ’ – CLIENTAGE[1016]

إذا أعتق الرجل مملوكه فولاؤه له، وكذلك المرأة تعتق، فإن شرط أنه سائبة فالشرط باطل

When a man sets his slave free, and likewise when a woman sets [a slave] free, the clientage (*walā’*) of [that freed slave] is for [the master or mistress]. If he makes a condition that he is set loose [without *walā’*], then the condition is void.

والولاء لمن أعتق

The clientage belongs to the person who sets [the slave] free.

و إذا أدى المكاتب عتق وولاؤه للمولى، و إن عتق بعد موت المولى فولاؤه لورثة المولى

When the slave given a contract to purchase his freedom pays off [his dues], he is set free and his clientage is for the master. If he is set free after the death of the master, then his clientage is for the heirs of the master.

و إذا مات المولى عتق مدبروه وأمهات أولاده وولاؤهم له

When the master dies, his slaves who were to be freed on his death (*mudabbars*) and the slave-women who are mothers of his children (*ummahāt al-awlād*) are set free, and their clientage is his.

ومن ملك ذا رحم محرم عتق عليه وولاؤه له

Whoever acquires ownership of an un-marriageable relative (*dhū raḥm maḥram*), he is set free from him, and the clientage of [the un-marriageable relative (*dhū raḥm maḥram*)] is his.

وإذا تزوج عبد رجل أمة الآخر فأعتق مولى الأمة الأمة وهي حامل من العبد عتقت وعتق حملها، وولاء الحمل لمولى الأم لا ينتقل عنه أبدا، فإن ولدت بعد عتقها لأكثر من ستة أشهر ولدا فولاؤه لمولى الأم، فإن أعتق العبد جر ولاء ابنه، وانتقل عن مولى الأم إلى مولى الأب

When the slave of one man marries the slave-woman of another, and the master of the slave-woman sets the slave-woman free, and she is pregnant by the slave (i.e. her husband), she [as well as] her foetus, are [both] set free. The clientage of the foetus is for the master of the mother from whom it will never be transferred. If she gives birth to a child after more than six months of her being set free, then its *walā’* is for the master of the mother, but then if the father is set free, he draws the clientage of his son and it is transferred from the master of the mother to the master of the father.

ومن تزوج من العجم بمعتقة العرب فولدت له أولادا فولاء ولدها لمواليها عند أبي حنيفة ومحمد رحمهما الله تعالى، وقال أبو يوسف رحمه الله تعالى يكون ولاء أولادها لأبيهم لأن النسب إلى الآباء

When a non-Arab marries a freed slave-woman of an Arab, and she gives birth to children from him, the clientage of her child is for her masters, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, but Abū Yūsuf, may Allah have mercy on him, said that the clientage of her children will be for their father because the lineage is [linked] to the fathers.

وولاء العتاقة تعصيب، فإن كان للمعتق عصبة من النسب فهو أولى منه، فإن لم يكن له عصبة من النسب فميراثه للمعتق

The clientage of being set free is [subject to] consanguine orientation (*ta‘ṣīb*).[1017] Thus, if the freed slave has a consanguine inheritor in lineage, he is the closest to him, but if he has no consanguine inheritor in lineage, then his inheritance is for the one who set him free.[1018]

فإن مات المولى ثم مات المعتق فميراثه لبني المولى دون بناته

If the master dies, and then later the freed slave [also] dies, the inheritance

of [the freed slave] is for the sons of his master not for his daughters.

وليس للنساء من الولاء إلا ما أعتقن، أو أعتق من أعتقن، أو كاتبن، أو كاتب من كاتبن، أو دبّرن أو دبر من دبرن، أو جر ولاء معتقهن أو معتق معتقهن

Women have no clientage except:

1. Of those whom they set free, or
2. Those whom they set free [in turn] set free,
3. Those whom they give a contract to purchase their freedom (*kitābah*), or
4. Those whom they have given a contract to purchase their freedom [in turn] give a contract to purchase their freedom (*kitābah*), or
5. Those they declare to be free after their death (*mudabbar*), or
6. Those they declare to be free after their death [in turn] declare free after their death, or
7. Who attract the clientage of someone whom they have freed, or
8. [Who attract the clientage] of the freed slave of someone whom they freed.

و إذا ترك المولى ابنا وأولاد ابن آخر فميراث المعتق للابن دون بني الابن لأن الولاء للكبير

When the master [dies and] leaves a son, and the children of another son,[1019] the inheritance of the freed slave is for the son [and] not for the grandsons, because the clientage is for the eldest.

و إذا أسلم رجل على يد رجل ووالاه على أن يرثه و يعقل عنه إذا جنى، أو أسلم على يد غيره ووالاه، فالولاء صحيح

When a person becomes Muslim at the hands of a man and makes a treaty of clientage with him that he will inherit [the new-Muslim] and [also] pay on his behalf when he commits [an] offence, or he becomes Muslim at the hands of someone else and makes a treaty of clientage with him, the clientage is valid.

وعقله على مولاه، فإن مات ولا وارث له فميراثه للمولى، وإن كان له وارث فهو أولى منه

The legal responsibility [of the slave] is upon the master.[1020] Hence, if he dies and has no heir, then his inheritance is for the master, but if he does have an heir, then [the heir] has more right than [the master].

وللمولى أن ينتقل عنه بولائه إلى غيره ما لم يعقل عنه، فإذا عقل عنه لم يكن له أن يتحول بولائه عنه إلى غيره

The master may transfer the clientage from himself onto someone else as long as he has not acted as legally responsible for him.[1021] When he has acted as legally responsible for him, then he may not transfer his clientage to anyone else.

وليس لمولى العتاقة أن يوالي أحدا

It is not [permissible] for the freed slave to enter into a treaty of clientage with anyone.[1022]

كتاب الجنايات

JINĀYĀT – OFFENCES

Kinds of Homicide

القتل على خمسة أوجه: عمد، وشبه عمد، وخطأ، وما أجري مجرى الخطأ، والقتل بسبب

Homicide is of five types:
1. Intentional (*‘amd* or ‘mens rea’),
2. Quasi-intentional (*shibh al-‘amd*),
3. Unintentional (*khaṭa’*),
4. A semblance of unintentional homicide (*mā ujriya majrā al-khaṭa’*),
5. Homicide by accidental cause (*qatl bi as-sabab*).

فالعمد: ما تعمد ضربه بسلاح، أو ما أجري مجرى السلاح في تفريق الأجزاء، كالمحدد من الخشب والحجر والنار، وموجب ذلك المأثم والقود، إلا أن يعفو الأولياء، ولا كفارة فيه

Intentional [homicide] (*qatl al-‘amd*) is when one intends to strike [the victim] with a weapon, or with that which is a substitute weapon [used] in severing limb from limb,[1023] like a sharpened piece of wood, stone and fire. The consequence of that [action] is sin and retaliation (*qiṣāṣ*), unless the heirs (the *walīs* entitled to exact retaliation) forgive [him], and there is no expiation for it.

وشبه العمد عند أبي حنيفة رحمه الله تعالى: أن يتعمد الضرب بما ليس بسلاحٍ، ولا ما أجري مجراه، وقالا رحمهما الله تعالى: إذا ضربه بحجر عظيم، أو بخشبة عظيمة، فهو عمد وشبه العمد: أن يتعمد ضربه بما لا يقتل غالبا، وموجب ذلك على القولين المأثم والكفارة، ولا قود، وفيه دية مغلظة على العاقلة

Quasi-intentional [homicide] (*qatl shibh al-‘amd*) – according to Abū Ḥanīfah, may Allah have mercy on him, is that one intends to strike with that which is not a weapon nor a substitute for it. They,[1024] may Allah have mercy on them, however, said that when one strikes another with a large stone or with a large piece of wood, then that amounts to intentional homicide, but quasi-intentional homicide is when one intends to strike [the victim] with that which does not ordinarily kill. According to both sayings, the consequence of that [action] is sin and expiation, and there is no retaliation for it. There is [however] severe compensatory payment (*diyah mughallaẓah*) for it, due from those legally responsible (*‘āqilah*).[1025]

والخطأ على وجهين: خطأ في القصد، وهو: أن يرمي شخصا يظنه صيدا فإذا هو آدمي، وخطأ في الفعل، وهو: أن يرمي غرضا فيصيب آدميا

Unintentional [homicide] (*qatl al-khaṭa’*) is of two types:

1. Mistake in purpose (*khaṭa’ fī al-qaṣd*): that is when one shoots [an arrow or other object] at a person believing him to be game, but it was a human, and
2. Mistake in act (*khaṭa’ fī al-fi‘l*): that is when one shoots [an arrow, etc.] towards a target and it hits a human.

وموجب ذلك: الكفارة، والدية على العاقلة، ولا مأثم فيه

The consequence of that [action] is expiation, and a compensatory payment (*diyah*) by the group legally responsible (*‘āqilah*), but there is no sin for it.

وما أجري مجرى الخطأ مثل النائم ينقلب على رجل فيقتله، فحكمه حكم الخطأ

That which resembles unintentional [homicide] (*qatl mā ujriya majrā al-khaṭa’*) – like a sleeping person who turns over [in his sleep] onto a person and kills him. The legal ruling for this [type of homicide] is the [same] ruling [as that] for unintentional [homicide].

وأما القتل بسبب: كحافر البئر، وواضع الحجر في غير ملكه،
وموجبه إذا تلف فيه آدمي: الدية على العاقلة، ولا كفارة عليه

Homicide by accidental cause (*qatl bi as-sabab*) – like someone who digs a well and the one who places a rock inside the property of another. The consequence of this [action], when a human perishes on account of it, is compensatory payment (*diyah*) upon the group legally responsible (*‘āqilah*), and there is no expiation for it.

Qiṣāṣ (Retaliation; lex talionis) for the Loss of Life

والقصاص واجب بقتل كل محقون الدم على التأبيد إذا قتل عمدا

Retaliation (*qiṣāṣ*) is obligatory for the killing of everyone the bloodshed of whom is to be prevented (*maḥqūn ad-dam*) forever, when someone kills [him] deliberately.

ويُقتل الحر بالحر، والحر بالعبد، والعبد بالحر، والعبد بالعبد ،
والمسلم بالذمي، ولا يُقتل المسلم بالمستأمن، ويقتل الرجل بالمرأة،
والكبير بالصغير، والصحيح بالأعمى والزمن

The free man is killed [in retaliation] for [the killing of] a free man, a free man for a slave, a slave for a free man, a slave for a slave and a Muslim for a person of the non-Muslims living under Muslim governance (*dhimmī*). The Muslim is not killed [in retaliation] for [killing] someone assured of temporary protection (*musta’min*). A man is killed for [killing] a woman, an adult for a minor, the sound of health for [killing] the blind and chronically ill.[1026]

ولا يُقتل الرجل بابنه، ولا بعبده، ولا بمدبره، ولا بمكاتبه، ولا
بعبد ولده

A man is not killed for [killing] his [own] son, nor for his slave, his slave who is to be set free after his death (*mudabbar*), his slave whom he has given a contract to purchase his own freedom (*mukātab*) or for his son’s slave.

ومن ورث قصاصا على أبيه سقط

Whoever inherits retaliation (*qiṣāṣ*) against his [own] father, it lapses.[1027]

ولا يستوفى القصاص إلا بالسيف

Retaliation is not to be carried out except with a sword.[1028]

و إذا قتل المكاتب عمدا و ليس له وارث إلا المولى فله القصاص
إن لم يترك وفاء، و إن ترك وفاء ووارثه غير المولى فلا قصاص لهم،
و إن اجتمعوا مع المولى

When a slave who has a contract to purchase his own freedom (*mukātab*) is intentionally killed, and

1. He has no heir but the master, [the master] has the right of retaliation if [the *mukātab*] leaves no payment [for the contract of *kitābah*],[1029]
2. If he does leave a payment [for the contract of *kitābah*] and his heir is someone other than the master, then [the heirs] have no right to exact retaliation, even if they unite with the master.

و إذا قتل عبد الرهن لا يجب القصاص حتى يجتمع الراهن
والمرتهن

When a slave who has been pledged is killed, retaliation is not obligatory until the pledgor and the pledgee unite.[1030]

ومن جرح رجلا عمدا فلم يزل صاحب فراش حتى مات فعليه
القصاص

Whoever injures a person deliberately, and [the victim] remains disabled[1031] until he dies, then [the offender] is liable to retaliation.

Qiṣāṣ for the Loss of Bodily Organs

ومن قطع يد غيره عمدا من المفصل قطعت يده، وكذلك الرجل،
ومارن الأنف، والأذن

Whoever deliberately amputates the hand of a person from the joint, the hand of [the offender] is amputated, and likewise the foot, the flexible part of the nose[1032] and the ear.[1033]

ومن ضرب عين رجل فقلعها فلا قصاص عليه، فإن كانت قائمة
وذهب ضوءها فعليه القصاص: تحمى له المرآة، ويجعل على وجهه
قطن رطب، وتقابل عينه بالمرآة حتى يذهب ضوءها

Whoever strikes the eye of a person and [thereby] knocks [the eyeball from its socket], there is no retaliation (*qiṣāṣ*) against him, but if it remains [in its socket] and its [sense of] sight is lost, then he is liable to retaliation. [As retaliation] a mirror[1034] is heated for him, some moist wool placed on his face and his eye made to face the [heated] mirror until its [sense of] sight goes.

وفي السن القصاص

There is [the right of] retaliation for teeth.

وفي كل شجة يمكن فيها المماثلة القصاص

There is retaliation in every head wound (*sḥajjah*) for which a corresponding [retaliatory wound] is possible.

ولا قصاص في عظم إلا في السن

There is no retaliation for bones other than for the teeth.

وليس فيما دون النفس شبه عمد، إنما هو عمد أو خطأ

There is no quasi-intentional (*shibh al-ʻamd*) [crime] in [anything] other than for [taking a] life (*nafs*); it is either intentional (*ʻamd*) or unintentional (*khaṭa'*).[1035]

ولا قصاص بين الرجل والمرأة فيما دون النفس، ولا بين الحر
والعبد، ولا بين العبدين

There is no retaliation between a man against a woman for [anything] other than [taking a] life, nor between a free man and a slave or between two slaves.

ويجب القصاص في الأطراف بين المسلم والكافر

[The right to] retaliation is obligatory for limbs between a Muslim and a disbeliever.

ومن قطع يد رجل من نصف الساعد، أو جرحه جائفة فبرأ منها فلا قصاص عليه

Whoever amputates the arm of a man from the middle of his forearm, or injures him in the body cavity (*jā'ifah*) and [the victim] recovers from it, there is no retaliation against [the offender].

و إذا كانت يد المقطوع صحيحة و يد القاطع شلاء أو ناقصة الأصابع فالمقطوع بالخيار: إن شاء قطع اليد المعيبة، ولا شيء له غيرها، و إن شاء أخذ الأرش كاملا

If the hand of the amputee[1036] was fine, and the hand of the person who amputated it[1037] is crippled, or its fingers are defective, then the amputee has the option:

1. If he wants, he may sever the impaired hand and he is not entitled to anything other than that, or
2. If he wants, he may take full compensation (*arsh*).

ومن شج رجلا فاستوعبت الشجة ما بين قرنيه، وهي لا تستوعب ما بين قرني الشاج، فالمشجوج بالخيار: إن شاء اقتص بمقدار شجته، يبتدئ من أي الجانبين شاء، و إن شاء أخذ الأرش كاملا

Whoever causes a head wound (*sḥajjah*) to a man and that head wound comprises that which is between both the sides of [his head] but it does not comprise that which is between the two sides of [the head of] the one who inflicted the head wound,[1038] then the victim of the head wound (*mashjūj*) has the option:

1. If he wants he may take retaliation according to the amount of his [own] head wound, beginning at either of the two sides [of the head] that he wants, or
2. If he wants he may take full compensation (*arsh*).

ولا قصاص في اللسان، ولا في الذكر، إلا أن تقطع الحشفة

There is no retaliation for the tongue nor for the penis, unless one amputates the head of the penis.[1039]

وإذا اصطلح القاتل أولياء المقتول على مال سقط القصاص،
ووجب المال، قليلا كان أو كثيرا، فإن عفا أحد الشركاء من الدم
أو صالح من نصيبه على عوض، سقط حق الباقين من القصاص،
وكان لهم نصيبهم من الدية

When the murderer makes an agreement with the heirs of the murder [victim] for [the payment of] some property, the retaliation lapses and the property becomes incumbent [to be paid by him], be it little or much. Thus, if any of the partners [to the right of retaliation] forgives the killing, or negotiates a settlement for his [own] share for a consideration, the right of retaliation for the remainder [of the heirs] lapses, and they are [only] entitled to their share of compensation (*diyah*).

وإذا قتل جماعة واحدا عمدا اقتص من جميعهم

When a group [of people] intentionally kill an individual, retaliation is to be applied to all of them.

وإذا قتل واحد جماعة فحضر أولياء المقتولين قتل لجماعتهم، ولا
شيء لهم غير ذلك، فإن حضر واحد منهم قتل له وسقط حق الباقين

When an individual kills a group, and the heirs of the murdered [victims] appear [for their rights], he is to be killed for all of them and they are not entitled to anything other than that,[1040] but if [only] one of [the heirs] appears, [the offender] is to be killed for him [only] and the right of the remainder [of the heirs] lapses.

ومن وجب عليه القصاص فمات سقط عنه القصاص

Against whomsoever *qiṣāṣ* is obligatory [to be executed] and he dies, the retaliation lapses.

وإذا قطع رجلان يد رجل واحد فلا قصاص على كل واحد
منهما، وعليهما نصف الدية

When two men amputate the hand of one man, there is no [right of] retaliation against either one of them, but they are each liable to a half of the compensatory payment (*diyah*).

وإن قطع واحد يميني رجلين فحضرا، فلهما أن يقطعا يده، ويأخذا منه نصف الدية، ويقتسمانها نصفين، فإن حضر واحد منهما فقطع يده فللآخر عليه نصف الدية

If one man amputates the right hands of two men, and both of them appear [to claim their rights], then both of them may amputate his [right] hand, and [also] take a half of the compensatory payment (*diyah*) from him, which they divide [between] themselves in two halves. But if [only] one of the two appears and he amputates the hand of [the offender], then the other may claim a half of the compensatory payment (*diyah*) from him.

وإذا أقر العبد بقتل العمد لزمه القود

When a slave confesses to intentional homicide, then retaliation is binding against him.

ومن رمي رجلا عمدا فنفذ السهم منه إلى آخر فماتا، فعليه القصاص للأول، والدية للثاني على عاقلته

Whoever deliberately shoots [an arrow, etc.] at a man, and the arrow passes through him and pierces another man [also] and they both die, then he is liable to retaliation for the first [victim], and the compensatory payment (*diyah*) for the second [victim] is due upon the group who are legally responsible for him (*‘āqilah*).[1041]

كتاب الديات

DIYĀT – COMPENSATORY PAYMENTS FOR CRIMES

إذا قتل رجل رجلا شبه عمد فعلى عاقلته دية مغلظة، وعليه كفارة

When a man kills [another man] quasi-intentionally (*shibh al-ʻamd*), then the group who are responsible for him (*ʻāqilah*) are liable for a severe compensatory payment (*diyah mughallaẓah*), and [the offender] must make expiation.[1042]

ودية شبه العمد عند أبي حنيفة وأبي يوسف رحمهما الله تعالى مائة من الإبل أرباعا:

According to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, the compensatory payment (*diyah*) for quasi-intentional (*shibh al-ʻamd*) homicide is one hundred camels of four types:

خمس وعشرون بنت مخاض، وخمس وعشرون بنت لبون، وخمس وعشرون حقة، وخمس وعشرون جذعة

1. Twenty-five camels that are daughters of a pregnant camel, and that have begun their second year (*bint makhāḍ*),
2. Twenty-five camels that are daughters of a suckling camel, and that have begun their third year (*bint labūn*),
3. Twenty-five camels ready for riding and carrying loads, and that have begun their fourth year (*ḥiqqah*), and
4. Twenty-five camels that have entered their fifth year (*jadhaʻah*).

ولا يثبت التغليظ إلا في الإبل خاصة، فإن قضي بالدية من غير الإبل لم تتغلظ

Severity (*taghlīẓ*) [in compensatory payment] is not established [in

anything] but camels. Thus, if judgement is given [to pay] the compensatory payment in something other than camels, it is not [regarded as] severe (*mughallaẓah*).

وفي قتل الخطأ تجب به الدية على العاقلة، والكفارة على القاتل

[With regards to] unintentional homicide (*qatl al-khaṭa’*), compensatory payment for it is incumbent upon the group responsible for the person who committed the homicide (*‘āqilah*) and expiation is binding on the killer.

والدية في الخطأ مائة من الإبل أخماسا: عشرون بنت مخاض، وعشرون ابن مخاض، وعشرون بنت لبون، وعشرون حقة، وعشرون جذعة

The compensatory payment (*diyah*) in unintentional homicide ([*qatl*] *al-khaṭa’*) is one hundred camels of five types:

1. Twenty camels that are daughters of a pregnant camel, and that have begun their second year (*bint makhāḍ*),
2. Twenty male camels that are sons of a pregnant camel and that are of one year’s age (*ibn makhāḍ*),
3. Twenty camels that are daughters of a suckling camel, and that have begun their third year (*bint labūn*),
4. Twenty camels ready for riding and carrying loads, and that have begun their fourth year (*ḥiqqah*), and
5. Twenty camels that have entered their fifth year (*jadha‘ah*).

ومن العين ألف دينار، ومن الورق عشرة آلاف درهم

In gold, [it is] one thousand dinars, and in silver, [it is] ten thousand dirhams.

ولا تثبت الدية إلا من هذه الأنواع الثلاثة عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: منها ومن البقر مائتا بقرة، ومن الغنم ألفا شاة، ومن الحلل مائتا حلة، كل حلة ثوبان

Compensatory payment (*diyah*) is not established except with these three categories, according to Abū Ḥanīfah, may Allah have mercy on him, but

they,[1043] may Allah have mercy on them, said regarding that, “[It is] with them (camels, gold and silver) and with cows, [it] is two hundred cows; in goats and sheep (*ghanam*), two thousand goats or sheep and in clothing, two hundred sets of clothing (*ḥullah*) where each set of clothing is of two garments.”[1044]

ودية المسلم والذمي سواء، وفى النفس الدية، وفى المارن الدية، وفى اللسان الدية، وفى الذكر الدية، وفى العقل إذا ضرب رأسه فذهب عقله الدية، وفى اللحية إذا حلقت فلم تنبت الدية، وفى شعر الرأس الدية

The compensatory payment (*diyah*) for a Muslim and [for] a non-Muslim living under Muslim governance (*dhimmī*) is the same.[1045] For [taking] life [there] is [payment of] the compensatory payment.

Organs of the Human Body of which there is Only One

1. For the cartilage of the septum [there] is [payment of] the compensatory payment,
2. For the tongue [there] is [payment of] the compensatory payment,
3. For the penis [there] is [payment of] the compensatory payment,
4. For the intellect, when one strikes someone’s head and his intellect goes, [there] is [payment of] the compensatory payment,
5. For the beard, when it is shaven and does not grow [again], [there] is [payment of] the compensatory payment, and
6. For the hair of the head [there] is [payment of] the compensatory payment.

Organs of the Human Body that Exist in Pairs[1046]

وفى الحاجبين الدية، وفى العينين الدية، وفى اليدين الدية، وفى الرجلين الدية، وفى الأذنين الدية، وفى الشفتين الدية، وفى الأنثيين الدية، وفى ثديي المرأة الدية، وفى كل واحد من هذه الأشياء نصف الدية

1. For both of the eyebrows [there] is [payment of] the compensatory payment,
2. For both of the eyes [there] is [payment of] the compensatory payment,
3. For both of the hands [there] is [payment of] the compensatory payment,
4. For both of the feet [there] is [payment of] the compensatory payment,
5. For both of the ears [there] is [payment of] the compensatory payment,
6. For both of the lips [there] is [payment of] the compensatory payment,
7. For both of the testicles [there] is [payment of] the compensatory payment,
8. For both of the breasts of a woman [there] is [payment of] the compensatory payment, and

for each of these parts [there] is [payment of] half the compensatory payment.[1047]

Organs of the Body, or other Essential Parts, of which there are More than Two

وفي أشفار العينين الدية، وفي أحدهما ربع الدية، وفي كل إصبع
من أصابع اليدين والرجلين عشر الدية، والأصابع كلها سواء،
وفي كل إصبع فيها ثلاثة مفاصل، ففي أحدها ثلث دية الإصبع،
وما فيها مفصلان ففي أحدهما نصف دية الإصبع

1. For the eyelashes of both eyes [there] is [payment of] the compensatory payment, whilst for each of them [there] is [payment of] a quarter of the compensatory payment,
2. For each of the digits of both hands and of both feet there is [to be paid] a tenth of the compensatory payment, all of the digits are [deemed to be] the same,
3. For each digit in which there are three joints,[1048] for each of them

there is a third of the compensatory payment of the [full] digit,

4. For that [digit] which has two joints,[1049] for either of the two [joints] there is due a half of the compensatory payment of the digit.

وفي كل سن خمس من الإبل، والأسنان والأضراس كلها سواء

For each tooth there are due five camels [as compensatory payment], and the incisors and the molars are all [deemed to be] the same.[1050]

ومن ضرب عضوا فأذهب منفعته ففيه دية كاملة، كما لو قطعه،
كاليد إذا شلت، والعين إذا ذهب ضوءها

Whoever strikes an organ [of the body] and he removes its [functioning] capacity, then for it there is due one full compensatory payment, just as if he had amputated it, such as the hand when it is crippled, and the eye when its [sense of] sight goes.

Compensatory Payment for Wounds

والشجاج عشرة: الحارصة، والدامعة، والدامية، والباضعة،
والمتلاحمة، والسمحاق، والموضحة، والهاشمة، والمنقلة، والآمة

There are ten kinds of head wound (*sḥajjah*):

1. Where the skin is ruptured but no bleeding occurs (*ḥāriṣah* or *khafīfah*),
2. Skin is ruptured and blood emerges but does not flow (*dāmi'ah*),
3. Skin is ruptured and bleeding occurs (*dāmiyah*),
4. Cutting or incising the flesh without exposure of the bone (*bāḍi'ah*),
5. Lacerating the flesh (*mutalāḥimah*),
6. When the wound touches the pericranium (*simḥāq*),
7. Exposing the bone but without fracturing it (*mūḍiḥah*),
8. Fracturing the bone but without dislocation (*hāshimah*),
9. Fracture and dislocation of the bone (*munaqqilah*),
10. Fracturing the skull and the wound touches the membrane of the brain (*āmmah*).

ففى الموضحة القصاص إن كانت عمدا، ولا قصاص في بقية الشجاج

For exposing the bone but without fracturing it (*mūḍiḥah*) there is retaliation, if it was intentional, and there is no retaliation for the remainder of head wounds.

وفي ما دون الموضحة ففيه حكومة عدل

For whatever is less than a wound exposing the bone but without fracturing it (*mūḍiḥah*) there is the ruling of an honest person.[1051]

وفى الموضحة إن كانت خطأ نصف عشر الدية

For exposing the bone but without fracturing it (*mūḍiḥah*), if it was [committed] unintentionally, there is a half of a tenth of the [full] compensatory payment.[1052]

وفى الهاشمة عشر الدية

For fracturing the bone but without dislocation (*hāshimah*) [there] is [due payment of] a tenth of the compensatory payment.

وفى المنقلة عشر ونصف عشر الدية

For fracture and dislocation of the bone (*munaqqilah*) [there] is [due payment of] a tenth plus a half of a tenth of the compensatory payment.[1053]

وفى الآمة ثلث الدية

For fracturing the skull and a wound that touches the membrane of the brain (*āmmah*) [there] is [due payment of] a third of the compensatory payment.

وفى الجائفة ثلث الدية، فإن نفذت فهي جائفتان ففيها ثلثا الدية

For a wound which penetrates into the inside [whether through the chest, belly, back or sides] (*jā’ifah*) [there] is [due payment of] a third of the compensatory payment. If it pierces [through to the other side], then that is two *jā’ifah* wounds,[1054] for which [there] is [due payment of] two-thirds of the compensatory payment.

Compensatory Payment for Amputation/Dismemberment

وفى أصابع اليد نصف الدية

For [all] the fingers of [one] hand [collectively] [there] is [due payment of] a half of the compensatory payment.

فإن قطعها مع الكف ففيها نصف الدية، و إن قطعها مع نصف
الساعد، ففى الأصابع و الكف نصف الدية، وفى الزيادة حكومة
عدل، وفى الإصبع الزائدة حكومة عدل

Then, if someone cuts them off along with the palm [of the hand], then [there] is [due payment of] a half of the compensatory payment, but if he cuts them off along with half of the forearm, then for the fingers and the palm [together] [there] is [due payment of] a half of the compensatory payment, and for the excess there is the judgement of an honest person. For any additional finger there is [also] the ruling of an honest person.

وفى عين الصبي ولسانه وذكره إذا لم تعلم صحته حكومة عدل

For the eye of a minor, his tongue and his penis, when its soundness is not known, there is the ruling of an honest person.

ومن شج رجلا موضحة فذهب عقله أو شعر رأسه دخل أرش
الموضحة في الدية، وإن ذهب سمعه أو بصره أو كلامه فعليه
أرش الموضحة مع الدية

Whoever wounds a man exposing the bone but without fracturing it (*mūḍiḥah*) and his intellect is lost, or the hair of his head [is lost], the compensation (*arsh*) for *mūḍiḥah* will render into [the full] compensatory payment.[1055] If his [sense of] hearing, his sight or his speech perish, then [the liability for] the compensation (*arsh*) for *mūḍiḥah* will be upon him, plus the compensatory payment (*diyah*).[1056]

ومن قطع إصبع رجل فشلت أخرى إلى جنبها ففيهما الأرش ولا
قصاص فيه عند أبي حنيفة رحمه الله تعالى

Whoever cuts a finger of a man off and the other [finger] next to it is crippled, then for both of them is compensation (*arsh*), and there is no retaliation for it, according to Abū Ḥanīfah, may Allah have mercy on him.

ومن قطع سن رجل فنبتت مكانها أخرى سقط الأرش

Whoever breaks the tooth of a man and another one grows in its place, the [right of] compensation lapses.

ومن شج رجلا فالتحمت الجراحة و لم يبق لها أثرٌ ونبت الشعر سقط الأرش عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف رحمه الله تعالى: عليه أرش الألم، وقال محمد رحمه الله تعالى: عليه أجرة الطبيب

Whoever wounds a man and the wound heals in such a way that no sign of it remains, and the hair has grown [again], the [right of] to compensation (*arsh*) lapses, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf, may Allah have mercy on him, said that [the offender] is liable to pay compensation (*arsh*) for the pain [caused to the victim], and Muḥammad, may Allah have mercy on him, said [that he is liable for] the doctor's charges.

ومن جرح رجلا جراحة لم يقتص منه حتى يبرأ

Whoever inflicts a wound on a man, [the offender] is not retaliated against until it is healed.

Compensatory Payment for Homicide and the Legally Responsible Group (*'Āqilah*)

ومن قطع يد رجل خطأ، ثم قتله خطأ قبل البرء، فعليه الدية وسقط أرش اليد، و إن برئ ثم قتله فعليه ديتان: دية نفس و دية اليد

Whoever cuts the hand of a man off by mistake, then later kills him by mistake prior to the recovery of the wound, [full] compensatory payment (*diyah*) is due from him and the compensation (*arsh*) for the hand lapses. If [the wound] heals, and then later [the offender] kills him, he is due [to pay] two compensatory payments (*diyah*); one compensatory payment for the life

and one compensatory payment for the hand.

وكل عمد سقط فيه القصاص بشبهة فالدية في مال القاتل، وكل
أرش وجب بالصلح و الإقرار فهو في مال القاتل

Every intentional homicide ([*qatl*] *al-ʻamd*) for which retaliation lapses due to doubt (*shubhah*), the compensatory payment is [taken] from the property of the murderer, and every compensation (*arsh*) which is incumbent because of [compounding] a negotiated settlement or confession is [taken] from the property of the killer.[1057]

و إذا قتل الأب ابنه عمدا فالدية في ماله في ثلاث سنين

When a father intentionally kills his son, compensatory payment is [taken] from his property within three years.[1058]

وكل جناية اعترف بها الجاني فهي في ماله، ولا يصدق على عاقلته

Every offence to which the offender confesses is [a liability paid] from his [own] property and it is not assigned to the group responsible for him (*ʻāqilah*).

وعمد الصبي والمجنون خطأ، وفيه الدية على العاقلة

The intentional [killing] by a minor or insane person is [regarded as] being unintentional (*khaṭa'*), and for it there is compensatory payment due from the group responsible for him (*ʻāqilah*).

ومن حفر بئرا في طريق المسلمين، أو وضع حجرا، فتلف بذلك
إنسان فديته على عاقلته، و إن تلف به بهيمة فضمانها في ماله

Whoever digs a well in the passageway of Muslims, or places a rock [there], and a person perishes due to it, then his compensatory payment is due from the group responsible (*ʻāqilah*) for [the offender]. If an animal perishes, then its compensation is from the property of [the offender].

و إن أشرع في الطريق روشنا أو ميزابا فسقط على إنسان فعطب
فالدية على عاقلته، ولا كفارة على حافر البئر وواضع الحجر

If one makes an aperture or a gutter[1059] towards a [public] passage, and it

falls on top of a person and he perishes, then his compensatory payment is due from the group responsible (*‘āqilah*) for him.

There is no expiation due the digger of the well, or [on] the one who places a rock [in the property of someone else].[1060]

ومن حفر بئرا في ملكه فعطب به إنسان لم يضمن

Whoever digs a well in his [own] property and a person perishes in it is not liable.

Offences by Riding Animals

والراكب ضامن لما أوطئت الدابة، وما أصابته بيدها أو كدمت، ولا يضمن ما نفحت برجلها أو ذنبها، فإن راثت أو بالت في الطريق فعطب به إنسان لم يضمن

The rider [of a mount] is responsible for whatever the mount tramples on, [for] whatever it knocks with its foreleg or [for] whatever it chews [with its mouth], but he is not liable for what it touches with its hind legs or with its tail. If it defecates or urinates in the path and a person perishes because of it, [the rider] is not liable.

والسائق ضامن لما أصابت بيدها أو رجلها، والقائد ضامن لما أصابت بيدها دون رجلها

The driver is responsible for whatever [the mount] touches with its foreleg, or [with] its hind leg, and the man who leads [animals by a halter] is responsible for what [the mount] touches with its foreleg, [but] not the hind leg.

ومن قاد قطارا فهو ضامن لما أوطأ، فإن كان معه سائق فالضمان عليهما

Whoever leads a caravan is responsible for whatever it tramples on. If he has a driver with him, then the liability falls upon both of them.

Offences by Slaves

وإذا جنى العبد جناية خطأ قيل لمولاه: إما أن تدفعه بها أو تفديه

When a slave commits an offence unintentionally, it is said to his master, “Either:

1. You hand him over for that [offence], or
2. You ransom him.”

فإن دفعه ملكه ولي الجناية، و إن فداه فداه بأرشها

If [the master] hands him over, the person responsible (*walī*) for [seeking redress] for the offence acquires ownership of him. If [the master] ransoms him, he ransoms him with the compensation (*arsh*) for [the offence].

فإن عاد فجنى كان حكم الجناية الثانية حكم الأولى

If [the slave] returns and offends again, the legal ruling of the second offence is [the same as] the legal ruling of the first.

فإن جنى جنايتين قيل لمولاه: إما أن تدفعه إلى ولي الجنايتين يقتسمانه على قدر حقوقهما، و إما أن تفديه بأرش كل واحدة منهما

If he commits two offences, it is said to his master, “Either:

1. You hand him over to the persons responsible (*walī*) for [seeking redress] for the two offences, who divide him according to the amount of their rights, or
2. You ransom him with compensation (*arsh*) for each of the two [offences].”

و إن أعتقه المولى، وهو لا يعلم بالجناية، ضمن المولى الأقل من قيمته ومن أرشها

If the master frees him unaware of the offence, the master is liable for the lesser of his value or the compensation (*arsh*) for [the offence].[1061]

و إن باعه أو أعتقه بعد العلم بالجناية وجب عليه الأرش

If he sells him, or frees him, after coming to know of the offence, [the payment of] compensation (*arsh*) is incumbent upon him.

و إذا جنى المدبر أو أم الولد جناية ضمن المولى الأقل من قيمته ومن أرشها

When a slave who is due to be freed on the death of his master (*mudabbar*), or a mother of her master's child (*umm al-walad*), commit an offence, the master is liable [to pay] the lesser: their value or the compensation (*arsh*) for [the offence].

فإن جنى جناية أخرى وقد دفع المولى قيمته إلى الولي الأول
بقضاء فلا شيء عليه ويتبع ولي الجناية الثانية ولي الجناية الأولى
فيشاركه فيما أخذ، وإن كان المولى دفع القيمة بغير قضاء فالولي
بالخيار: إن شاء اتبع المولى، وإن شاء اتبع ولي الجناية الأولى

If they commit another offence, and the master had already paid their value to the first person responsible (*walī*) [for the first offence] due to a legal decision, then there is nothing [as liability] upon him. The person responsible (*walī*) for [seeking redress] for the second offence pursues the person responsible (*walī*) for [seeking redress] for the first offence and shares with him in what he has taken. If the master had paid the value without a legal decision, then the person responsible (*walī*) [for the second offence] has a choice:

1. If he wants, he may seek redress from the master, or
2. If he wants, he may seek redress from the person responsible (*walī*) for [seeking redress] for the first offence.

Leaning Walls and Killing Slaves

وإذا مال الحائط إلى طريق المسلمين فطولب صاحبه بنقضه
وأشهد عليه فلم ينقضه في مدة يقدر على نقضه حتى سقط ضمن
ما تلف به من نفس أو مال

When a wall leans over the path of Muslims, and its owner is demanded to demolish it, and [the demand] has been witnessed, and he does not demolish it within a period in which he could have demolished it, until it falls, he is liable for whatever perishes due to it, be it of life or [of] property.

ويستوي أن يطالبه بنقضه مسلم أو ذمي

It is the same whether a Muslim demands its demolition or a non-Muslim

living under Muslim governance (*dhimmī*).

و إن مال إلى دار رجل، فالمطالبة لمالك الدار خاصة

If it leans towards the house of a man, then the demand [for its demolition or reparation] is only vested in the owner of the house.

فإذا اصطدم فارسان فماتا، فعلى عاقلة كل واحد منهما دية الآخر

If two horse-riders[1062] collide and both of them die, then the group responsible (*'āqilah*) for each of the two is responsible for [payment of] the compensatory payment for the other.

و إذا قتل رجل عبدا خطأ فعليه قيمته لا تزاد على عشرة آلاف درهم، فإن كانت قيمته عشرة آلاف درهم أو أكثر، قضى عليه بعشرة آلاف إلا عشرة، وفى الأمة إذا زادت قيمتها على الدية خمسة آلاف إلا عشرة

When a man kills a slave unintentionally, he is liable for his value, and it shall not exceed ten thousand dirhams. If his value was ten thousand dirhams or more, judgement is given against him for ten thousand less ten.[1063] [With regards to] the slave-woman, when her value exceeds the [amount of] compensatory payment (*diyah*), five thousand less ten is incumbent.[1064]

وفى يد العبد نصف قيمته، لا يزاد على خمسة آلاف إلا خمسة

For the hand of a slave there is due a half of his value, and it shall not exceed five thousand less five.[1065]

وكل ما يقدر من دية الحر فهو مقدر من قيمة العبد

All that which is taken into account in the compensatory payment for a free man, it is [also to be] taken into account in the value of the slave.

و إذا ضرب رجل بطن امرأة فألقت جنينا ميتا فعليه غرة، والغرة نصف عشر الدية، فإن ألقته حياً ثم مات ففيه دية كاملة، و إن ألقته ميتا ثم ماتت الأم فعليه دية وغرة، و إن ماتت ثم ألقته ميتا فلا شيء في الجنين

When a man[1066] strikes the belly of a woman and she miscarries the foetus, then he is liable for *ghurrah*; *ghurrah* is a half of the tenth of the compensatory payment (*diyah*).[1067] If she delivers it alive, and then later it dies, there is full compensatory payment (*diyah*) for it. If she delivers it stillborn, then later the mother dies, compensatory payment and *ghurrah* are [both] due upon him. If she dies, then later delivers it stillborn, there is nothing for the [delivered] foetus [as liability].[1068]

وما يجب في الجنين موروث عنه

Whatever is incumbent for the foetus [as compensation] is for his heir.[1069]

وفي جنين الأمة إذا كان ذكرا نصف عشر قيمته لو كان حيا،
وعشر قيمته إن كان أنثى

[With regards to] the foetus of a slave-woman, when it is a male, [compensatory payment (*diyah*) is] a half of the tenth[1070] of its value if it was alive, and a tenth of its value if it is a female.

ولا كفارة في الجنين

There is no expiation for [the death of] a foetus.

والكفارة في شبه العمد والخطأ: عتق رقبة مؤمنة، فإن لم يوجد
فصيام شهرين متتابعين، ولا يجزئ فيها الإطعام

The expiation in quasi-intentional (*shibh al-'amd*) and unintentional (*al-khaṭa'*) [homicide] is to free one Muslim slave, and if he is not found, then to fast two months consecutively [as expiation], but feeding [the needy] is not sufficient for it.

باب القسامة

QASĀMAH – COMPURGATION BY OATH

وإذا وجد القتيل في محلة ولا يعلم من قتله استحلف خمسون
رجلا منهم يتخيرهم الولي: بالله ما قتلناه ولا علمنا له قاتلا، فإذا
حلفوا قضي على أهل المحلة بالدية

When someone is found slain in a locality and it is not known who killed him, fifty men, whom the heir [of the slain man] (*walī*) chooses, are made to swear an oath: “By Allah! We did not kill him and neither do we know of his killer.”

When [after] they have sworn, compensatory payment (*diyah*) is adjudged to be due from the people of the locality.[1071]

ولا يستحلف الولي، ولا يقضى عليه بالجناية وإن حلف

The heir [of the slain man] (*walī*) is not required to swear [the oath] nor is he adjudicated against with [respect to] the offence, even if he does swear [the oath].

وإن أبي واحد منهم حبس حتى يحلف

If any of them refuse [to swear the oath], he is taken into custody until he swears.

وإن لم يكمل أهل المحلة كررت الأيمان عليهم حتى يتم خمسون يمينا

If the people of the locality do not complete [the quorum of fifty], the oaths are repeated amongst them until they complete fifty oaths.

ولا يدخل في القسامة صبي ولا مجنون ولا امرأة ولا عبد

Minors, the insane, women and slaves are not included in the *qasāmah*.[1072]

وإن وجد ميت لا أثر به فلا قسامة ولا دية، وكذلك إن كان الدم يسيل من أنفه أو دبره أو فمه، فإن كان يخرج من عينيه أو أذنيه فهو قتيل

If a dead [body] is found, and there is no sign upon it,[1073] there is no *qasāmah* or compensatory payment (*diyah*) [for it], and likewise if blood is pouring from his nose, his behind or [from] his mouth. If, however, [the blood] is emerging from his eyes or his ears, then he has been killed.

وإذا وجد القتيل على دابة يسوقها رجل فالدية على عاقلته دون أهل المحلة

When a slain person is found on a mount which a man was driving, then compensatory payment (*diyah*) is due from the group legally responsible for him (*‘āqilah*) not from the people of the locality.

وإن وجد القتيل في دار إنسان فالقسامة عليه والدية على عاقلته

If the slain person is found in the house of a person, the *qasāmah* is due from [the occupier of the house] and compensatory payment (*diyah*) is due from the group legally responsible for him (*‘āqilah*).

ولا يدخل السكان في القسامة مع الملاك عند أبي حنيفة رحمه الله تعالى، وهي على أهل الخطة دون المشترين، ولو بقي منهم واحد

Lessees shall not enter the *qasāmah* with [the presence of] landlords, according to Abū Ḥanīfah, may Allah have mercy on him.[1074] It is due from the original authorised settlers (*ahl al-khiṭṭah*) and not buyers,[1075] even if [only] one of them remains.

وإن وجد القتيل في سفينة فالقسامة على من فيها من الركاب والملاحين

If the slain person is found on a boat, the *qasāmah* is due from whomever is embarked [on it] and the boatmen who are in it.

وإن وجد في مسجد محلة فالقسامة على أهلها

If he is found in a locality’s mosque, the *qasāmah* is due from the inhabitants of that locality.

وإن وجد في الجامع أو الشارع الأعظم فلا قسامة فيه، والدية على بيت المال

If he is found in a congregational (*jāmi‘*) mosque, or [in] a main road, then there is no *qasāmah* in it, and the compensatory payment (*diyah*) is due from the public treasury (*bayt al-māl*).

وإن وجد في برية ليس بقربها عمارة فهو هدر وإن وجد بين قريتين كان على أقربهما

If he is found in the wilderness where there is no building close by, then he is not to be retaliated for and it goes uncompensated (*hadar*). If he is found between two villages, [the *qasāmah*] is due from the closer of the two.

وإن وجد في وسط الفرات يمر بها الماء فهو هدر، فإن كان محتبسا بالشاطئ فهو على أقرب القرى من ذلك المكان

If he is found in the middle of the [River] Euphrates[1076] and water is flowing over him, then he is not to be retaliated for and it goes uncompensated. If he is held to the bank [of the river], then he is [the liability] of the closest of the villages to that place.

وإن ادعى الولي القتل على واحد من أهل المحلة بعينه لم تسقط القسامة عنهم، وإن ادعى على واحد من غيرهم سقطت عنهم القسامة

If the heir [of the slain] (*walī*) accuses one specific person of the people of the locality with murder, the *qasāmah* does not lapse from [the other people of the locality], but if he claims [the murder] against someone other than [the locals], *qasāmah* lapses from them.

وإذا قال المستحلف «قتله فلان» استحلف «بالله ما قتلت ولا علمت له قاتلا غير فلان»

When the oath-taker says, "So-and-so killed him," he is made to swear an oath: "By Allah! I did not kill [him] and neither do I know of his murderer, other than so-and-so."

وإذا شهد اثنان من أهل المحلة على رجل من غيرهم أنه قتله لم تقبل شهادتهما

When two of the people of the locality testify against a man, other than [the locals] that he killed him, their testimony is not accepted.

كتاب المعاقل

MA'ĀQIL – PAYERS OF *DIYĀT*/THE LEGALLY RESPONSIBLE GROUP

الدية في شبه العمد والخطأ، وكل دية وجبت بنفس القتل على العاقلة

Compensatory payment (*diyah*) for quasi-intentional ([*qatl*] *shibh al-'amd*) and unintentional ([*qatl*] *al-khaṭa'*) [homicide] and every compensatory payment that is incumbent due to homicide itself,[1077] are due from the legally responsible group (*'āqilah*).

والعاقلة: أهل الديوان إن كان القاتل من أهل الديوان، يؤخذ من عطاياهم في ثلاث سنين

The *'āqilah* are the people of the register (*dīwān*) (of military personnel)[1078] if the killer is from the people of the register; [the *diyah*] is taken from their wages over three years.

فإن خرجت العطايا في أكثر من ثلاث سنين أو أقل أخذ منها

If the wages are paid in more than three years, or less, it shall [nevertheless] be taken from them.

ومن لم يكن من أهل الديوان فعاقلته قبيلته، تقسط عليهم في ثلاث سنين، لا يزاد الواحد على أربعة دراهم في كل سنة درهم ودانقان وينقص منها

Whoever is not of the people of the register (*dīwān*) [of military personnel], then his legally responsible group (*'āqilah*) are his tribe, from whom [*diyah*] is taken in instalments over three years, no one [paying] more than four dirhams [in total]. In each year [the payment] is one dirham and two *dāniqs*[1079] [per head]. [The total payment] may be less than [four dirhams].

فإن لم تتسع القبيلة لذلك ضم إليهم أقرب القبائل إليهم، ويدخل القاتل مع العاقلة، فيكون فيما يؤدى مثل أحدهم

If the tribe cannot afford that [amount], the tribe closest to them are merged with them and the killer will join with the legally responsible group, and he will be like one of them in whatever he pays.[1080]

وعاقلة المعتق قبيلة مولاه

The group legally responsible for a freed slave is the tribe of his master.

ومولى الموالاة يعقل عنه مولاه وقبيلته

The person who has become a client (*mawlā*) of amity (*mawalāt*),[1081] his master (*mawlā*) and the tribe of [the master] pay [compensatory payment] on his behalf.

ولا تتحمل العاقلة أقل من نصف عشر الدية، وتتحمل نصف العشر فصاعدا، وما نقص من ذلك فهو في مال الجاني

The group who are responsible (*'āqilah*) do not undertake [the payment of] less than a half of a tenth[1082] of the compensatory payment, and it undertakes a half of the tenth or more. Whatever is less than that [amount of the total liability], is [taken] from the property of the offender.[1083]

ولا تعقل العاقلة جناية العبد، ولا تعقل الجناية التي اعترف بها الجاني إلا أن يصدقوه، ولا تعقل ما لزم بالصلح

The legally responsible group does not pay [compensatory payment (*diyah*)] for an offence [committed] by a slave, nor does it pay for the offence to which the offender confesses, unless they all confirm it.[1084] They do not pay [compensatory payment (*diyah*)] for what becomes binding by negotiated settlement.

وإذا جنى الحر على العبد جناية خطأ كانت على عاقلته

When a free man commits an offence of unintentional ([*qatl*] *al-khaṭa'*) [homicide] against a slave, it is [a liability] upon his legally responsible group (*'āqilah*).

كتاب الحدود

ḤUDŪD – PUNISHMENTS FOR CONTRAVENTION OF THE LIMITS[1085]

Zinā – Unlawful Sexual Intercourse

الزنا يثبت بالبينة والإقرار

Unlawful sexual intercourse[1086] is established[1087] by clear proof and confession.

فالبينة: أن تشهد أربعة من الشهود على رجل أو امرأة بالزنا

Clear proof [of unlawful sexual intercourse] is that four male witnesses[1088] testify against a man or a woman [having committed] unlawful sexual intercourse.

فسألهم الإمام عن الزنا

The Imam (leader) is to interrogate [the witnesses] regarding the unlawful sexual intercourse:

ما هو؟ وكيف هو؟ وأين زنى؟ ومتى زنى ؟ وبمن زنى؟

1. What is it?
2. How was it [committed]?
3. Where did he [or she] commit unlawful sexual intercourse?
4. When did he [or she] commit unlawful sexual intercourse?
5. With whom did he [or she] commit unlawful sexual intercourse?

فإذا بينوا ذلك وقالوا: رأيناه وطئها في فرجها كالميل في المكحلة،
وسأل القاضي عنهم، فعدلوا في السر والعلانية، حكم بشهادتهم

When they make that clear, and they say, “We saw him having sexual intercourse with her in her vagina, just like a kohl stick inside a kohl jar,” the

judge is to inquire about them and [if] they are declared honest in private and in public[1089] he is to legally decide according to their testimony.

والإقرار: أن يقر البالغ العاقل على نفسه بالزنا، أربع مرات، في أربعة مجالس من مجالس المقر، كلما أقر رده القاضي، فإذا تم إقراره أربع مرات سأله القاضي عن الزنا: ما هو؟ وكيف هو؟ وأين زنى؟ وبمن زنى؟ فإذا بين ذلك لزمه الحد

Confession is that a sane and adult [person] confesses against himself four times, in four [separate] sessions of the sessions of confession,[1090] whenever [the offender] confesses, the judge refuting him. When his confession is completed four times, the judge should question him regarding the unlawful sexual intercourse: what it was, how it was [committed], where he committed the unlawful sexual intercourse and with whom he committed the unlawful sexual intercourse. Thus, when he has disclosed [all] that, the *ḥadd* punishment is carried out on him.

فإن كان الزاني محصنا رجمه بالحجارة حتى يموت

If the person who committed unlawful sexual intercourse (*zānī*) is or has been married (*muḥṣan*),[1091] he is pelted with stones until he dies.

يخرجه إلى أرض فضاء، يبتدئ الشهود برجمه، ثم الإمام، ثم الناس، فإن امتنع الشهود من الابتداء سقط الحد

He is taken out to open ground and the witnesses begin by stoning him, thereafter the leader (Imam), followed by [the rest of] the people. If the witnesses decline to initiate [the stoning], the *ḥadd* punishment lapses.

وإن كان الزاني مقرا ابتداء الإمام ثم الناس

If the person who committed unlawful sexual intercourse had confessed, the leader (Imam) commences [the stoning], then [the rest of] the people.

ويغسل ويكفن ويصلى عليه

[When he dies after being applied the *ḥadd* punishment] he is given a *ghusl*, shrouded and prayed over.[1092]

وإن لم يكن محصنا وكان حرا فحده مائة جلدة، يأمر الإمام بضربه بسوط لا ثمرة له ضربا متوسطا تنزع عنه ثيابه ويفرق الضرب على أعضائه إلا رأسه ووجهه وفرجه

If he was not married and had never consummated a marriage, and he is a free man, then his *ḥadd* punishment is one hundred lashes. The leader (Imam) shall give the order to strike him with a whip in which there is no knot, [with] medium strokes. His clothes are removed from him and the lashes dispersed over his limbs except his head, his face and his private parts (*farj*).

وإن كان عبدا جلده خمسين كذلك

If he is a slave, his lashes are fifty [in] the same [manner].

Retraction by the Confessor and Witness

فإن رجع المقر عن إقراره قبل إقامة الحد عليه، أو في وسطه، قبل رجوعه وخلي سبيله

If the one who confesses [to] unlawful sexual intercourse goes back on his confession prior to the application of the *ḥadd* punishment to him or [even] during it, his retraction is accepted and he is released.

ويستحب للإمام أن يلقن المقر الرجوع، ويقول له: لعلك لمست أو قبلت

It is recommended for the leader (Imam) to encourage the one who is confessing to retract [his confession], and [that] he says to him, “Perhaps you [only] touched or kissed [her].”

والرجل والمرأة في ذلك سواء، غير أن المرأة لا تنزع عنها ثيابها إلا الفرو والحشو

The man and woman are [treated] the same in that,[1093] except that with the woman, her clothes are not removed except for fur and padding.[1094]

وإن حفر لها في الرجم جاز

In the [case of] pelting, it is permitted for [a ditch] to be dug for her.[1095]

ولا يقيم المولى الحد على عبده وأمته إلا بإذن الإمام

A master may not apply the *ḥadd* punishment to his slave or to his slave-woman, except with the permission of the leader (Imam).

وإن رجع أحد الشهود بعد الحكم وقبل الرجم ضربوا الحد
وسقط الرجم عن المشهود عليه

If one of the witnesses retracts [his testimony] after the legal decision [has been issued], [but] prior to the stoning, the *ḥadd* punishment is applied to them,[1096] and the [the *ḥadd* punishment of] stoning lapses from the accused.

وإن رجع بعد الرجم حد الراجع وحده وضمن ربع الدية

If he retracts [his testimony] after the stoning, the retracting [witness] alone is subject to the *ḥadd* punishment, and he [alone] is liable to a quarter of the compensatory payment (*diyah*).

وإن نقص عدد الشهود عن أربعة حدوا جميعا

If the number of witnesses falls below four, all of them are subject to the *ḥadd* punishment.[1097]

وإحصان الرجم: أن يكون حرا، بالغا، عاقلا، مسلما قد تزوج
امرأة نكاحا صحيحا، ودخل بها وهما على صفة الإحصان

The [conditions of] being *muḥṣan* (*iḥṣān*) for stoning are to be:

1. Free,
2. Adult,
3. Sane,
4. Muslim,
5. Who has married a woman in a valid marriage, and
6. Has had sexual intercourse with her when both of them had the characteristics of *iḥṣān*.[1098]

ولا يجمع في المحصن بين الجلد والرجم

Lashing and stoning are not combined in [the punishment of] the *muḥṣan*.[1099]

ولا يجمع في البكر بين الجلد والنفي، إلا أن يرى الإمام ذلك
مصلحة فيعزر به على قدر ما يرى

Lashing and banishment are not combined in [the punishment of] a virgin [male or female], unless the leader (Imam) sees that as welfare, and so punishes him according to what he deems appropriate.

و إذا زنى المريض وحدّه الرجم رجم، و إن كان حده الجلد لم
يجلد حتى يبرأ

When an ill person commits unlawful sexual intercourse, his *ḥadd* punishment being stoning,[1100] he is stoned [to death], but if his *ḥadd* punishment is lashing, he is not whipped until he recovers [from his illness].

فإذا زنت الحامل لم تحد حتى تضع حملها

When a pregnant woman commits unlawful sexual intercourse, she is not subjected to the *ḥadd* punishment until she delivers.[1101],[1102]

و إن كان حدها الجلد فحتى تتعلى من نفاسها

If her *ḥadd* punishment is lashes, then [it is not applied] until she comes out of her postnatal bleeding.[1103]

و إذا شهد الشهود بحد متقادم لم يمنعهم عن إقامته بعدهم عن
الإمام لم تقبل شهادتهم، إلا في حد القذف خاصة

When the witnesses testify of a previous *ḥadd* punishment, the execution of which their distance from the leader (Imam) did not hinder them,[1104] their testimony is not accepted except in the [case of] the *ḥadd* punishment for unsubstantiated accusations of unlawful sexual intercourse in particular.[1105]

ومن وطئ امرأة أجنبية في ما دون الفرج عزر

Whoever has sexual intercourse with a female non-relative in other than the vagina, is to be subjected to a discretionary punishment (*ta'zīr*).[1106]

ولا حد على من وطئ جارية ولده وولد ولده، و إن قال «علمت
أنها علي حرام»

There is no *ḥadd* punishment for someone who has sexual intercourse with the slave-woman of his son, or of his grandson, even if he says, "I knew that she was *ḥarām* for me."

وإذا وطئ جارية أبيه أو أمه أو زوجته، أو وطئ العبد جارية
مولاه، وقال «علمت أنها علي حرام» حد، وإن قال «ظننت أنها
تحل لي» لم يحد

When someone has sexual intercourse with the slave-woman of his father, [of] his mother or [of] his wife, or a slave has sexual intercourse with the slave-woman of his master and says, "I knew that she was *ḥarām* for me," he is to be subjected to the *ḥadd* punishment, but if he says, "I thought that she was *ḥalāl* for me," he is not subjected to the *ḥadd* punishment.

ومن وطئ جارية أخيه، أو عمه، وقال «ظننت أنها عليّ حلال» حد

Whoever has sexual intercourse with the slave-woman of his brother, or [of] his paternal uncle and says, "I thought that she was *ḥalāl* for me" is subject to the *ḥadd* punishment.

ومن زفت إليه غير امرأته وقالت النساء «إنها زوجتك» فوطئها،
فلا حد عليه، وعليه المهر

Someone to whom a woman other than his wife is conducted [in matrimonial fashion], and the women say, "She is your wife," and he has sexual intercourse with her, there is no *ḥadd* punishment upon him, but he owes [the payment of] dowry.

ومن وجد امرأة على فراشه فوطأها فعليه الحد

Whoever finds a woman in his bed and he has sexual intercourse with her, then the *ḥadd* punishment is carried out upon him.

ومن تزوج امرأة لا يحل له نكاحها فوطئها لم يجب عليه الحد

Whoever marries a woman to whom marriage is not lawful and has sexual intercourse with her, the *hadd* punishment is not carried out upon him.[1107]

ومن أتى امرأة في الموضع المكروه أو عمل عمل قوم لوط فلا حد عليه عند أبي حنيفة رحمه الله تعالى ويعزر، وقالا رحمهما الله تعالى: هو كالزنا

Whoever comes to a woman by that location which is disapproved,[1108] or he practices the act of the nation of [the Prophet] Lūt[1109] there is no *ḥadd* punishment, according to Abū Ḥanīfah, may Allah have mercy on him, but he is subject to a discretionary punishment (*taʻzīr*). They,[1110] may Allah have mercy on them, however, said that it is like unlawful sexual intercourse and he is subject to the *ḥadd* punishment.

ومن وطئ بهيمة فلا حد عليه

Whoever has sexual intercourse with an animal,[1111] there is no *ḥadd* punishment for him.

ومن زنى في دار الحرب أو دار البغي ثم خرج إلينا لم يقم عليه الحد

Whoever commits unlawful sexual intercourse in enemy territory (*dār al-ḥarb*), or in rebellious territory (*dār al-baghy*),[1112] and thereafter, he comes out to us [Muslims], the *ḥadd* punishment is not applied to him.

باب حد الشرب

The *Ḥadd* Punishment for Consumption of Alcohol (*Shurb*)

ومن شرب الخمر فأخذ وريحها موجودة فشهد الشهود عليه بذلك عليه أو أقر وريحها موجودة فعليه الحد، وإن أقر بعد ذهاب رائحتها لم يحد

Whoever drinks wine (*khamr*) and is caught while its odour is present, and witnesses testify against him to that effect, or he confesses while its odour is present, then the *ḥadd* punishment is due upon him. If he confesses after the departure of its odour, he is not subject to the *ḥadd* punishment.

ومن سكر من النبيذ حد

Whoever becomes intoxicated with date-beverage (*nabīdh*) is subject to

the *ḥadd* punishment.

ولا حد على من وجد منه رائحة الخمر أو تقيأها

There is no *ḥadd* punishment upon someone from whom the odour of wine is smelt, or [if] he vomits [wine].[1113]

ولا يحد السكران حتى يعلم أنه سكر من النبيذ وشربه طوعا

The intoxicated [person] is not subject to the *ḥadd* punishment until it is known that he was intoxicated with date-beverage and [that] he drank it voluntarily.

ولا يحد حتى يزول عنه السكر

Someone is not punished with the *ḥadd* punishment until the intoxication has left him.[1114]

وحد الخمر والسكر في الحر ثمانون سوطا، يفرق على بدنه كما ذكرنا في الزنا، فإن كان عبدا فحده أربعون

The *ḥadd* punishment for wine and intoxication for the free man is eighty lashes which are dispersed over his body, just as we mentioned in [the case of] unlawful sexual intercourse. If it is a slave, then his *ḥadd* punishment is forty [lashes].

ومن أقر بشرب الخمر و السكر ثم رجع لم يحد

Whoever confesses to drinking wine and [to] intoxication, then later goes back [on his confession] is not subject to the *ḥadd* punishment.

و يثبت الشرب بشهادة شاهدين، أو بإقراره مرة واحدة

Drinking [wine] is proven by the testimony of two male witnesses, or by his confessing once.

ولا تقبل فيه شهادة النساء مع الرجال

The testimony of women along with the men is not accepted for [intoxication].

باب حد القذف

QADHF – UNSUBSTANTIATED ACCUSATION OF UNLAWFUL SEXUAL INTERCOURSE

إذا قذف الرجل رجلا محصنا أو امرأة محصنة بصريح الزنا، وطالب المقذوف بالحد حده الحاكم ثمانين سوطا إن كان حرا يفرق على أعضائه، ولا يجرد عن ثيابه، غير أنه ينزع عنه الفرو والحشو، وإن كان عبدا جلده أربعين سوطا

When a man accuses a *muḥṣan* man or a *muḥṣanah* woman of explicit unlawful sexual intercourse without substantiation, and the person accused of unlawful sexual intercourse (*maqdhūf*) demands the *ḥadd* punishment, the judge (*ḥākim*) is to carry out the *ḥadd* punishment on [the accuser].[1115] [It is] eighty lashes if he is a free man, which are dispersed over his limbs. He is not to be stripped of his clothes, except that fur and padding are removed from him. If he is a slave, [the *ḥākim*] lashes him forty times.

والإحصان: أن يكون المقذوف حرا، بالغا، عاقلا، مسلما، عفيفا عن فعل الزنا

Iḥṣān[1116] is that the person falsely accused of unlawful sexual intercourse (*maqdhūf*) be:

1. Free,
2. Adult,
3. Sane,
4. Muslim, and
5. Abstaining from the act of unlawful sexual intercourse.

ومن نفى نسب غيره فقال «لست لأبيك»، أو «يا ابن الزانية» وأمه محصنة ميتة فطالب الابن بحدها حُد القاذف

Whoever denies the lineage of someone and says, “You are not your father’s,” or “O son of an adulteress,” and his mother was a *muḥṣanah* who is dead, and the son demands the *ḥadd* punishment for her, the person who makes the unsubstantiated allegations of sexual misconduct is subjected to the *ḥadd* punishment.

ولا يطالب بحد القذف للميت إلا من يقع القدح في نسبه بقذفه

The *ḥadd* punishment for unsubstantiated accusations of unlawful sexual intercourse by the deceased is only demanded by someone in whose lineage impairment occurs due to the unsubstantiated accusations of unlawful sexual intercourse [made by the offender].[1117]

و إذا كان المقذوف محصنا جاز لابنه الكافر والعبد أن يطالب بالحد

When the person against whom the unsubstantiated allegations are made is *muḥṣan*, it is permissible for his non-Muslim son and [also] his slave to demand the *ḥadd* punishment.

وليس للعبد أن يطالب مولاه بقذف أمه الحرة

The slave may not demand [the *ḥadd* punishment] for his [own] master for unsubstantiated accusations of unlawful sexual intercourse [made] against his [own] free mother.

و إن أقر بالقذف ثم رجع لم يقبل رجوعه

If someone confesses to [making] unsubstantiated accusations of unlawful sexual intercourse, and then later retracts [it], his retraction is not accepted.

ومن قال لعربي «يا نبطي» لم يحد، ومن قال لرجل «يا ابن ماء السماء» فليس بقاذف، و إذا نسبه إلى عمه أو إلى خاله أو إلى زوج أمه فليس بقاذف

Whoever says to an Arab, "O Nabatean" is not subject to the *ḥadd* punishment, and whoever says to a man, "O son of the Water of the Sky (*Mā' as-Samā'*)"[1118] has not made an unsubstantiated allegation of sexual misconduct. When someone ascribes [another] to his paternal uncle, to his maternal uncle, or to the husband of his mother, he has not made an unsubstantiated allegation of sexual misconduct.

ومن وطئ وطئا حراما في غير ملكه لم يحد قاذفه

Whoever has *ḥarām* sexual intercourse in a place other than his own property, then the person who makes an unsubstantiated accusation of

unlawful sexual intercourse against him is not subject to the *ḥadd* punishment.

والملاعنة بولد لا يحد قاذفها وإن كانت الملاعنة بغير ولد حد قاذفها

A woman whose husband engaged in the process of *li'ān* with her who has a child [whose paternity he did not accept], the person who makes an unsubstantiated accusation of unlawful sexual intercourse against her is not subjected to the *ḥadd* punishment.[1119] If, however, the woman whose husband engaged in the process of *li'ān* with her is without a child then the person who makes an unsubstantiated accusation of unlawful sexual intercourse against her is subject to the *ḥadd* punishment.

ومن قذف أمة أو عبدا أو كافرا بالزنا، أو قذف مسلما بغير الزنا، فقال: يا فاسق، أو يا كافر، أو يا خبيث، عزر، وإن قال يا حمار أو يا خنزير لم يعزر

Whoever without substantiation accuses a slave-woman, a slave or a non-Muslim of unlawful sexual intercourse, or makes unsubstantiated accusations against a Muslim of [an act] other than unlawful sexual intercourse and says, "You deviant (*fāsiq*)," "O disbeliever (*kāfir*)," or "You foul person (*khabīth*)" is to be subjected to a discretionary punishment, but if he says, "You donkey (*ḥimār*)," or "You pig (*khinzīr*)" he is not subject to a discretionary punishment.

Ta'zīr **– Discretionary Punishment**

والتعزير: أكثره تسعة وثلاثون سوطا، وأقله ثلاث جلدات

Discretionary punishment's maximum is thirty-nine lashes, and its minimum is three lashes.

وقال أبو يوسف رحمه الله تعالى: يبلغ بالتعزير خمسة وسبعين سوطا

Abū Yūsuf, may Allah have mercy on him, said that discretionary punishment can reach [up to] seventy-five lashes.

وإن رأى الإمام أن يضم إلى الضرب في التعزير الحبس فعل

If the leader (Imam) decides to combine the lashes in discretionary punishment with imprisonment, he may do so.

وأشد الضرب التعزير، ثم حد الزنا، ثم حد الشرب، ثم حد القذف

The most intense striking is [in]:

1. Discretionary punishment (*ta'zīr*), then
2. The *ḥadd* punishment for unlawful sexual intercourse (*zinā*), then
3. The *ḥadd* punishment for drinking alcohol (*shurb*), and then
4. The *ḥadd* punishment for unsubstantiated accusations of unlawful sexual intercourse (*qadhf*).

ومن حده الإمام أو عزره فمات فدمه هدر

Whomsoever the leader (Imam) applies the *ḥadd* punishment to, or punishes with discretionary punishment, who then dies, his death is to be un-retaliated and uncompensated.

وإذا حد المسلم في القذف سقطت شهادته، وإن تاب

When a Muslim is subjected to the *ḥadd* punishment for unsubstantiated accusations of unlawful sexual intercourse, his testimony lapses, even though he repents.[1120]

وإن حد الكافر في القذف ثم أسلم قبلت شهادته

If a non-Muslim is subjected to the *ḥadd* punishment for unsubstantiated accusations of unlawful sexual intercourse, then later becomes a Muslim, his testimony will be accepted.[1121]

كتاب السرقة وقطاع الطريق

SARIQAH WA QUṬṬĀʿ AṬ-ṬARĪQ – THEFT & HIGHWAY ROBBERS

إذا سرق البالغ العاقل عشرة دراهم، أو ما قيمته عشرة دراهم، مضروبة كانت أو غير مضروبةٍ، من حرز لا شبهة فيه، وجب عليه القطع، والعبد والحر فيه سواء

When an adult, sane person steals ten dirhams, or that whose value is ten dirhams, coined[1122] or un-coined, from a well-protected place about which there is no doubt, then amputation is prescribed[1123] against him. The free man and the slave are [deemed] the same in this [matter].

ويجب القطع بإقراره مرة واحدة، أو بشهادة شاهدين

Amputation becomes obligatory by:

1. His single confession, and [also] by
2. The testimony of two [male] witnesses [against him].

و إذا اشترك جماعة في سرقة فأصاب كل واحد منهم عشرة دراهم قطع، و إن أصابه أقل من ذلك لم يقطع

If a group join together to steal, and each one of them acquires ten dirhams, he is subject to amputation, but if he acquires less that that [amount], he is not subject to amputation.

ولا يقطع فيما يوجد تافها مباحا في دار الإسلام، كالخشب، والحشيش، والقصب، والسمك، والصيد، ولا فيما يسرع إليه الفساد، كالفواكه الرطبة، واللبن، واللحم، والبطيخ، والفاكهة على الشجر، والزرع الذي لم يحصد

One is not subject to amputation for [the theft of] what is found to be insignificant and ownerless in the abode of Islam (*dār al-Islām*), like wood, grass, cane, fish and game, nor for what perishes quickly, like fresh fruit, milk, meat, melons, fruit on trees and crops that have not been harvested.

ولا قطع في الأشربة المطربة، ولا في الطنبور، ولا في سرقة
المصحف وإن كان عليه حلية ولا في الصليب من الذهب والفضة،
ولا الشطرنج ولا النرد

One is not subject to amputation for [the theft of]:

1. Delicious beverages,
2. A lute, nor for the theft of
3. A written copy of the Qur'ān (*muṣḥaf*) even if there is decoration on it,[1124]
4. A crucifix [made] from gold and silver,
5. Chess [set] or backgammon.[1125]

ولا قطع على سارق الصبي الحر وإن كان عليه حليٌ، ولا سارق
العبد الكبير

There is no amputation for the kidnapper of a free minor, even if there may be jewellery on him, nor for the abductor of an adult slave.

ويقطع سارق العبد الصغير

The kidnapper of a minor slave is subject to amputation.

ولا قطع في الدفاتر كلها إلا في دفاتر الحساب

There is no amputation for [the theft of] any files except for files of accounts.[1126]

ولا يقطع سارق كلب، ولا فهد، ولا دف، ولا طبل، ولا مزمار،
ويقطع في الساج والقناء والآبنوس والصندل

The thief of a dog, a lynx, a tambourine, a drum and a woodwind musical instrument (*mizmār*) is not subject to amputation, but he is subject to amputation for [the theft of] teak, the shaft of a spear, ebony and sandalwood.

و إذا اتخذ من الخشب أوان أو أبواب قطع فيها

When pots and doors are manufactured from wood, someone is subject to amputation [for the theft of it].

ولا قطع على خائن ولا خائنة، ولا نباش، ولا منتهب، ولا مختلس

There is no amputation for a male or female fraudster, a bodysnatcher, a looter or a pilferer.

ولا يقطع السارق من بيت المال، ولا من مال للسارق فيه شركة

Someone who steals from the public treasury (*bayt al-māl*) is not subject to amputation, nor for [the theft of] property in which the thief has a share.[1127]

ومن سرق من أبويه أو ولده أو ذي رحم محرم منه لم يقطع، وكذلك إذا سرق أحد الزوجين من الآخر، أو العبد من سيده، أو من امرأة سيده، أو من زوج سيدته، أوالمولى من مكاتبه، وكذلك السارق من المغنم

Whoever steals from his [own] parents, from his son or from an unmarriageable relative (*dhū raḥm maḥram*) is not subject to amputation, and likewise when one of the spouses steals from the other, a slave from his master or from the wife of his master, from the husband of his mistress, or a master [steals] from his slave to whom he has given a contract to buy his freedom (*mukātab*), and similarly someone who steals from booty.

On Well-Protected Places (*Ḥirz*)

والحرز على ضربين حرز لمعنىً فيه، كالدور والبيوت، والحرز بالحافظ

Well-protected places are of two types:

1. Well-protected places, like houses and rooms, and
2. Well-protected places with a guard.

فمن سرق عينا من حرز أو غير حرز وصاحبه عنده يحفظه وجب عليه القطع

So, whoever steals something specific from a well-protected place or a place that is not well-protected when its owner was with it safeguarding it, amputation is prescribed against [the thief].

ولا قطع على من سرق من حمام أو من بيت أذن للناس في دخوله

There is no amputation for someone who steals from the public baths (*ḥammām*), or from a room which is permitted to the public to enter.

ومن سرق من المسجد متاعا وصاحبه عنده قطع

Whoever steals an item from a mosque and its owner was with it, [the thief] is subject to amputation.

ولا قطع على الضيف إذا سرق ممن أضافه

There is no amputation for a guest when he steals from the one who hosted him.

و إذا نقب اللص البيت، ودخل، فأخذ المال وناوله آخر خارج البيت فلا قطع عليهما

When a burglar makes a hole in a house, enters, takes away property and hands it over to someone else outside the house, there is no amputation for either of the two.

و إن ألقاه في الطريق ثم خرج فأخذه قطع، وكذالك إذا حمله على حمار وساقه فأخرجه

But if he threw it into the street then came out and took it, he is subject to amputation, and likewise, when he loads it on a donkey and drives it and [thereby] takes it out [of the house].

و إذا دخل الحرز جماعة فتولى بعضهم الأخذ قطعوا جميعا

When a group enters a well-protected place and [only] some of them take [things], all of them are subject to amputation.

ومن نقب البيت وأدخل يده فيه وأخذ شيئا لم يقطع، و إن أدخل يده في صندوق الصيرفي، أو في كم غيره، وأخذ المال، قطع

Whoever makes a hole in a house and enters his hand into it and takes something is not subject to amputation, but if he enters his hand into the trunk of a cambist, or into the pocket of someone, and takes his property, he is subject to amputation.

On Amputation

وتقطع يمين السارق من الزند وتحسم

The right hand of the thief is amputated from the wrist and it is cauterised.

فإن سرق ثانيا قطعت رجله اليسرى

If he steals [a] second [time], his left foot is amputated.

فإن سرق ثالثا لم يقطع وخلد في السجن حتى يتوب

If he steals [a] third [time], he is not subject to amputation but is made to remain in prison until he repents.

و إذا كان السارق أشل اليد اليسرى، أو أقطع، أو مقطوع الرجل اليمنى، لم يقطع

If the thief has a crippled left hand, or it is amputated, or his right leg is amputated, he is not subject to amputation.[1128]

ولا يقطع السارق إلا أن يحضر المسروق منه فيطالب بالسرقة، فإن وهبها من السارق، أو باعها منه، أو نقصت قيمتها عن النصاب، لم يقطع

The thief is not subject to amputation unless the one he stole from is present and demands [the legal decision and punishment for] theft. If he gives [the stolen property] to the thief as a gift, sells it to him, or if its value drops below the minimum level (*niṣāb* of ten dirhams), [the thief] is not subject to amputation.

ومن سرق عينا فقطع فيها وردها ثم عاد فسرقها وهي بحالها، لم يقطع، وإن تغيرت عن حالها، مثل أن كانت غزلا فسرقه فقطع فيه ورده ثم نسج فعاد وسرقه قطع

Whoever steals an item and [his hand or foot] is amputated for it, and then he returns it, and then later returns and steals it [again] whilst it is [in] the same [condition], is not subject to [a second] amputation. But if it had altered from its [previous] state, for example, it was some spun thread and he stole it and [his hand or foot] was amputated for it, and then he returned it, and then later it is woven,[1129] and he returns and steals it, he is subject to [a second] amputation.

وإذا قطع السارق والعين قائمة في يده ردها، وإن كانت هالكة لم يضمن

When the [hand or foot of the] thief is amputated and the item remains in his possession, he returns it, but if it has perished, he is not liable.

وإذا ادعى السارق أن العين المسروقة ملكه سقط القطع عنه وإن لم يقم بينة

When the thief claims that the stolen item is his [own] property, the amputation lapses, even if he does not produce evidence.

On Highway Robbery

وإذا خرج جماعة ممتنعين، أو واحد يقدر على الامتناع، فقصدوا قطع الطريق فأخذوا قبل أن يأخذوا مالا ولا قتلوا نفسا حبسهم الإمام حتى يحدثوا توبة

When a group of people goes out as those forbidding others [on their way], or one [person] who is able to hinder [others], and they intend to commit highway robbery (*qaṭʿ aṭ-ṭarīq*),[1130] and they are caught before they take any property [of others], and they have not killed anyone, the leader (Imam) should detain them until they express repentance.

وإن أخذوا مال مسلم أو ذمي والمأخوذ إذا قسم على جماعتهم
أصاب كل واحد منهم عشرة دراهم فصاعدا أو ما تبلغ قيمته ذلك
قطع الإمام أيديهم وأرجلهم من خلافٍ

If they take the property of a Muslim or [of] a non-Muslim living under the governance of Islam (*dhimmī*), and when the seized item is divided between their group each of them gains ten dirhams or more, or its value reaches that [amount], the leader (Imam) amputates alternate hands and feet.[1131]

وإن قتلوا نفسا ولم يأخذوا مالا قتلهم الإمام حدا، فإن عفا
الأولياء عنهم لم يلتفت إلى عفوهم

If they killed someone but did not take any property, the leader kills them as *ḥadd* [punishment],[1132] but if the heirs forgive them, he does not pay heed to their forgiveness.[1133]

وإن قتلوا وأخذوا مالا فالإمام بالخيار: إن شاء قطع أيديهم وأرجلهم
من خلاف وقتلهم وصلبهم، وإن شاء قتلهم، وإن شاء صلبهم

If they murdered as well as taking property, then the leader has an option:

1. If he wants, he amputates alternate hands and feet, kills them and crucifies them, and
2. If he wants, he kills them, and
3. If he wants, he crucifies them.

يصلب حيا، ويبعج بطنه بالرمح إلى أن يموت، ولا يصلب أكثر
من ثلاثة أيام

They are to be crucified alive, and their bellies are slit with a spear until they are dead; they are not crucified for more than three days.

فإن كان فيهم صبي أو مجنون، أو ذو رحم محرم من المقطوع
عليه سقط الحد عن الباقين

If there is a minor among them, someone who is insane or an un-marriageable relative (*dhū raḥm maḥram*) of the victim of the banditry

[*maqṭū‘ ‘alayhi*], the *ḥadd* punishment against the rest of them lapses.[1134]

وصار القتل إلى الأولياء، إن شاؤا قتلوا، وإن شاؤا عفوا، وإن باشر القتل واحد منهم أجري القتل على جماعتهم

And the [right of] killing goes to the heirs:

4. If they want, they may kill [the group], or

5. If they want, they may pardon [them all].

If any of [the bandits] had pursued the murder, killing [as a *ḥadd* punishment] is carried out against them all.[1135]

كتاب الأشربة

ASHRIBAH – [INTOXICATING] DRINKS

الأشربة المحرمة أربعة: الخمر، وهي: عصير العنب إذا غلا
واشتد وقذف بالزبد، والعصير إذا طبخ حتى ذهب أقل من ثلثيه،
ونقيع التمر، ونقيع الزبيب إذا غلا واشتد

There are four [types of] prohibited drinks:

1. Wine – and that is the juice of grapes when it ferments,[1136] becomes strong[1137] and gives off froth,[1138]
2. Expressed fruit juice – when it is cooked until less than two-thirds of it has gone,[1139]
3. The infusion (*naqī‘*) of dates,[1140] and
4. The infusion of raisins, when it ferments and becomes strong.

ونبيذ التمر والزبيب إذا طبخ كل واحد منهما أدنى طبخة حلالٌ،
وإن اشتد، إذا شرب منه ما يغلب على ظنه أنه لا يسكره من غير
لهو ولا طرب، ولا بأس بالخليطين

Mead (*nabīdh*) of dates and [of] raisins, when each of the two is cooked with minimum cooking is lawful, even though it becomes strong, when one drinks some of it predominantly believing that it will not intoxicate him, not [drinking it] for amusement and pleasure,[1141] and there is no objection to the mixture of the two.[1142]

ونبيذ العسل والتين والحنطة والشعير والذرة حلال وإن لم يطبخ

The mead of honey, figs, wheat, barley and durra[1143] is lawful, even though it may not be [fully] cooked.[1144]

وعصير العنب إذا طبخ حتى ذهب منه ثلثاه حلال وإن اشتد

The juice of grapes, when it is cooked until two-thirds of it has gone from it, is lawful, even if it is strong.

ولا بأس بالانتباذ في الدباء والحنتم والمزفت والنقير

There is no harm in producing mead inside a gourd, a fresh pitcher, a pitcher smeared with pitch or a hollowed piece of wood (*naqīr*).

وإذا تخللت الخمر حلت، سواء صارت بنفسها خلاً أو بشيء
طرح فيها، ولا يكره تخليلها

When wine becomes vinegar it is lawful, irrespective of [whether] it changes into vinegar on its own or due to something cast into it. It is not disapproved to make [wine] into vinegar.

كتاب الصيد والذبائح

ṢAYD WA DHABĀ'IḤ – GAME & ANIMALS FOR SLAUGHTER

يجوز الاصطياد بالكلب المعلم، والفهد، والبازي، وسائر الجوارح المعلمة

Hunting with a trained dog as well as with a lynx,[1145] a falcon and with all trained predators, is permitted.

وتعليم الكلب: أن يترك الأكل ثلاث مرات، وتعليم البازي: أن يرجع إذا دعوته

The training of a dog is that it refrains [from] eating three times,[1146] and the training of a falcon is that it returns when you summon it.

فإن أرسل كلبه المعلم، أو بازيه، أو صقره، على صيد وذكر اسم الله تعالى عليه عند إرسال، فأخذ الصيد وجرحه فمات حل أكله، فإن أكل منه الكلب أو الفهد لم يؤكل، و إن أكل منه البازي أكل

If someone sets his trained dog, his falcon or his hawk on game, and pronounces the name of Allah, exalted is He, on sending it, and it seizes the game and wounds it, and [the game] dies, eating it is lawful. But if the dog or lynx eats of it, it is not eaten. If, however, the falcon eats of it, it may be eaten.

و إذا أدرك المرسل الصيد حيا وجب عليه أن يذكيه، فإن ترك تذكيته حتى مات لم يؤكل

If the person who loosed [the trained animal] finds the game [still] alive, it is incumbent upon him to slaughter it, and if he refrains from slaughtering it until it dies, it is not to be eaten.

وإن خنقه الكلب ولم يجرحه لم يؤكل

If the dog strangles [the game and it dies] and it did not wound it, it should not be eaten.

وإن شاركه كلب غير معلم أو كلب مجوسي أو كلب لم يذكر
اسم الله تعالى عليه لم يؤكل

If an untrained dog, the dog of a Magian, or a dog over which the name of Allah, exalted is He, has not been mentioned, shares in [killing the game], it should not be eaten.

وإذا رمى الرجل سهما إلى الصيد فسمى الله تعالى عند الرمي
أكل ما أصابه إذا جرحه السهم فمات، وإن أدركه حيا ذكاه، وإن
ترك تذكيته لم يؤكل

When a person shoots an arrow at game and says the name of Allah, exalted is He, whilst shooting, if the arrow wounds it and it dies, whatever it hits [and kills] may be eaten. If he finds it alive, he slaughters it, and if he refrains from slaughtering it, it is not to be eaten.[1147]

وإذا وقع السهم بالصيد فتحامل حتى غاب عنه ولم يزل في طلبه
حتى أصابه ميتا أكل، فإن قعد عن طلبه ثم أصابه ميتا لم يؤكل

When the arrow hits the game and [the game] carries on [it] until it disappears and he continues searching until he finds it dead, it may be eaten. But if he gave up pursuing it, and then later found it dead, it is not to be eaten.

وإن رمى صيدا فوقع في الماء لم يؤكل، وكذلك إن وقع على سطح
أو جبل ثم تردى منه إلى الأرض لم يؤكل، وإن وقع على الأرض
ابتداءً أكل

If someone shoots game and [the game] ends up in water, it is not to be eaten, and likewise if it lands on a roof or a mountain, then later falls down off it onto the ground, it is not to be eaten. However, if it initially ended up on the ground, it may be eaten.[1148]

وما أصاب المعراض بعرضه لم يؤكل، وإن جرحه أكل

Whatever a blunt object (*mi‘rāḍ*) hits with its width is not to be eaten,[1149] but if it [merely] wounds it, it may be eaten.[1150]

ولا يؤكل ما أصابته البندقة إذا مات منها

Whatever a pellet[1151] hits, it is not to be eaten, if it dies from it.

وإذا رمى صيدا فقطع عضوا منه أكل الصيد، ولم يؤكل العضو، وإن قطعه أثلاثا والأكثر مما يلي العجز أكل الجميع، وإن كان الأكثر مما يلي الرأس أكل الأكثر

When someone shoots [an arrow] at game and severs a limb from it, the game may be eaten, but the [severed] limb is not to be eaten. If [the arrow] cuts it into three and most of it is connected to the posterior, [then] all [of it] may be eaten,[1152] but if most of it is of that which is connected to the head, [then] the larger [part] may be eaten.[1153]

ولا يؤكل صيد المجوسي والمرتد والوثني والمحرم

The game of the Magian, the apostate, the idolater and the person in *iḥrām* is not to be eaten.

ومن رمى صيدا فأصابه ولم يثخنه ولم يخرجه من حيز الامتناع فرماه آخر فقتله فهو للثاني، ويؤكل

Whoever shoots [an arrow at] game and hits it, but does not weaken it and does not take it out of the boundary of prohibition,[1154] and another [person] casts [an arrow] at it and kills it, then it belongs to the second [hunter], and it may be eaten.

وإن كان الأول أثخنه فرماه الثاني فقتله فهو للأول ولم يؤكل، والثاني ضامن بقيمته للأول غير ما نقصته جراحته

But if the first [hunter] had weakened it, and the second [hunter] shoots at it and kills it, it belongs to the first [hunter], but it is not to be eaten.[1155] The second [hunter] compensates for its value to the first less whatever the wounding of it had diminished.[1156]

ويجوز اصطياد ما يؤكل لحمه من الحيوان وما لا يؤكل

It is permitted to hunt the animal whose meat is [lawfully] eaten or not [lawfully] eaten.

وذبيحة المسلم والكتابي حلال، ولا تؤكل ذبيحة المرتد والمجوسي والوثني والمحرم

The animal (*dhabīḥah*) slaughtered by a Muslim and by a person of the People of the Book (*kitābī*) is lawful,[1157] but the animal slaughtered by an apostate, a Magian, an idolater and a person in *iḥrām* is not to be eaten.

و إن ترك الذابح التسمية عمدا فالذبيحة ميتة لا تؤكل، و إن تركها ناسيا أكلت

If the slaughterer deliberately omits saying the name of Allah, the slaughtered animal is [deemed to be] something that has died[1158] and is not to be eaten, but if he leaves it out of forgetfulness it may be eaten.

On *Dhabḥ* – Slaughtering

والذبح بين الحلق واللبة

Slaughter (*dhabḥ*) is [made] between the throat[1159] and the upper bone of the chest.[1160]

والعروق التي تقطع في الذكاة أربعة: الحلقوم، والمريء، والودجان

The vessels that are cut in slaughter are four:

1. The windpipe or trachea (*ḥulqūm*),[1161]
2. The gullet or oesophagus (*marī'*),[1162]
3. And the two jugular veins (*wadjān*).[1163]

فإن قطعها حل الأكل، و إن قطع أكثرها فكذلك عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: لا بد من قطع الحلقوم والمرئ وأحد الودجين

If someone cuts them [all], eating [of that slaughtered animal] is lawful. If he cuts the majority of them, it is likewise, according to Abū Ḥanīfah, may

Allah have mercy on him, but they,[1164] may Allah have mercy on them, said that cutting the windpipe, the gullet and [either] one of the two jugular veins is essential.

ويجوز الذبح بالليطة والمروة، وبكل شيء أنهر الدم إلا السن القائم والظفر القائم

Slaughtering is permitted with splinters, sharp stones and with anything that causes blood to pour forth, except fixed teeth and fixed nails.[1165]

ويستحب أن يحد الذابح شفرته

It is recommended for the slaughterer to sharpen his blade.

ومن بلغ بالسكين النخاع، أو قطع الرأس كره له ذلك، وتؤكل ذبيحته

Whoever reaches the spinal cord with the knife and severs the head, that is disapproved for him, but the animal he slaughtered may be eaten.

وإن ذبح الشاة من قفاها، فإن بقيت حية حتى قطع العروق جاز ويكره

If someone slaughters a sheep or goat [beginning] from its nape, if it remains alive until [all] the vessels are cut, it is permitted, but it is disapproved.

وإن ماتت قبل قطع العروق لم تؤكل

But if it dies prior to cutting [all] of the vessels, it is not to be eaten.

وما استأنس من الصيد فذكاته الذبح، وما توحش من النعم فذكاته العقر والجرح

Whatever game becomes tame[1166] is slaughtered by *dhabḥ*. Grazing livestock which have become wild[1167] are slaughtered by stabbing and wounding.

والمستحب في الإبل النحر، وإن ذبحها جاز ويكره

Naḥr[1168] is recommended for the camel, but if one slaughters it by *dhabḥ* it is permitted but disapproved.

والمستحب في البقر والغنم الذبح، فإن نحرهما جاز ويكره

Dhabḥ is recommended for oxen, and sheep and goats, but if someone performs *naḥr* on them it is permitted but disapproved.

ومن نحر ناقة أو ذبح بقرة أو شاة، فوجد في بطنها جنينا ميتا لم يؤكل أشعر أو لم يشعر

Whoever slaughters a she-camel by *naḥr* or slaughters a cow, sheep or goat by *dhabḥ*, and finds a dead foetus in its uterus, [that foetus] is not to be eaten, [irrespective of whether] it is definable or not.

ولا يجوز أكل كل ذي ناب من السباع، وكل ذي مخلب من الطير

It is not permitted to eat any predator which has canine teeth, and [any] bird which has talons.

ولا بأس بغراب الزرع، ولا يؤكل الأبقع الذي يأكل الجيف

There is no objection [to eating] the agrarian crow,[1169] but the speckled crow,[1170] which eats carrion, is not eaten.

ويكره أكل الضبع والضب والحشرات كلها

It is disapproved to eat hyenas, lizards and all insects.

ولا يجوز أكل لحم الحمر الأهلية والبغال، ويكره أكل لحم الفرس عند أبي حنيفة رحمه الله تعالى

It is not permitted to eat the meat of the domestic donkey or [of] the mule, and it is disapproved to eat the meat of the horse according to Abū Ḥanīfah, may Allah have mercy on him.

ولا بأس بأكل الأرنب

There is no harm in eating rabbit.

و إذا ذبح ما لا يؤكل لحمه طهر جلده ولحمه إلا الآدمي والخنزير، فإن الذكاة لا تعمل فيهما

When that, the meat of which is not eaten, is slaughtered by *dhabḥ*, its hide and flesh become [physically] pure, except [the hide of] the human[1171] and [of] the pig,[1172] and sacrifice (*dhakāh*) does not work [for purification] in either of the two.

ولا يؤكل من حيوان الماء إلا السمك، ويكره أكل الطافي منه

Animals of the water are not to be eaten except for fish and it is disapproved to eat those [fish] which [have died and] float on the surface.

ولا بأس بأكل الجرّيث والمار ماهي ويجوز أكل الجرادة، ولا ذكاة له

There is no objection to eating the hagfish and the eel [which is called in Persian] the *mārmāhī* and it is permitted to eat locusts and there is no [need to] sacrifice them.

كتاب الأضحية

UḌḤIYAH – SACRIFICE

الأضحية واجبة على كل حر مسلم مقيم موسر، في يوم الأضحى

Sacrifice is incumbent upon every free Muslim man, who is resident and [financially] well-off, on the day of *Aḍḥā*.[1173]

يذبح عن نفسه وعن ولده الصغير، يذبح عن كل واحد منهم
شاة أو يذبح بدنة أو بقرة عن سبعة

He should slaughter [an animal] on his own behalf and on behalf of his minor child. He should slaughter on behalf of each of them a sheep or goat or he should slaughter a camel or a cow on behalf of seven [persons].

وليس على الفقير والمسافر أضحية

It is not incumbent on the needy and the traveller to sacrifice.

ووقت الأضحية يدخل بطلوع الفجر من يوم النحر، إلا أنه
لا يجوز لأهل الأمصار الذبح حتى يصلي الإمام صلاة العيد، فأما
أهل السواد فيذبحون بعد طلوع الفجر

The time of the sacrifice begins at dawning of the *fajr* on the day of sacrifice (*naḥr*), except that it is not permitted for those living in cities to slaughter until the Imam has offered the *'Īd* prayer. With regards to village inhabitants, they may slaughter after the dawning of the *fajr*.

وهي جائزة في ثلاثة أيام: يوم النحر، و يومان بعده

[Slaughtering] is permitted for three days; the day of sacrifice (*naḥr*) and two days after it.

ولا يضحى بالعمياء والعوراء والعرجاء، التي لا تمشي إلى المنسك،
ولا العجفاء

One may not sacrifice blind, one-eyed and lame [animals] which cannot walk to the place of sacrifice, nor [does one sacrifice] emaciated [animals].

ولا تجزئ مقطوعة الأذن والذنب، ولا التي ذهب أكثر أذنها أو ذنبها، و إن بقي الأكثر من الأذن والذنب جاز

It is not sufficient [to sacrifice] an [animal] which has a severed ear or tail, nor the [animal] a major portion of whose ear or tail is missing. If the larger [part] of its ear or tail remains then [that] is permitted.

ويجوز أن يضحى بالجماء والخصي والجرباء والثولاء

It is permitted to sacrifice a hornless [animal], one that is gelded, scabbed or mad.

والأضحية من الإبل والبقر والغنم، يجزئ من ذلك كله الثني فصاعدا إلا الضأن فإن الجذع منه يجزئ

Sacrifice is [only] of camels, bovine animals and sheep and goats (ovines); it is sufficient for them each to be *thanī*[1174] or above, other than the sheep for which a *jadha*‘[1175] suffices.

ويأكل من لحم الأضحية، ويطعم الأغنياء والفقراء، ويدخر

One may eat from the meat of the sacrifice, feed [it to] those who are not in need and to the needy, and one may [also] store [some of] it.

ويستحب أن لا ينقص الصدقة من الثلث، ويتصدق بجلدها أو يعمل منه آلة تستعمل في البيت

It is recommended not to give less of it in *ṣadaqah* than a third.[1176] He may give its hide as *ṣadaqah* or [he may] make an instrument from it which may be used in the house.

والأفضل أن يذبح أضحيته بيده إن كان يحسن الذبح

It is better for someone to slaughter his own sacrifice [animal] with his own hands, if he slaughters well.

ويكره أن يذبحها الكتابي

It is disapproved for one of the People of the Book (*kitābī*) to slaughter it.

وإذا غلط رجلان فذبح كل واحد منهما أضحية الآخر أجزأ عنهما ولا ضمان عليهما

When two men err and each of them slaughters the sacrificial animal of the other, it suffices on behalf of both of them, and there is no liability against either of the two.

كتاب الأيمان

AYMĀN – OATHS

الأيمان على ثلاثة أضرب: يمين غموس، ويمين منعقدة، ويمين لغو

There are three types of oath:

1. A false oath (*yamīn ghamūs*),
2. An enacted oath (*yamīn mun'aqidah*), and
3. An unintentional oath (*yamīn laghw*).

فيمين الغموس هي: الحلف على أمر ماض، يتعمد الكذب فيه، فهذه اليمين يأثم بها صاحبها، ولا كفارة فيها إلا التوبة والاستغفار

The false oath is the oath about a past matter by which a lie is intended. This is the oath by which its exponent becomes sinful. There is no expiation for it other than repenting and seeking forgiveness.

واليمين المنعقدة: هي أن يحلف على الأمر المستقبل أن يفعله، أو لا يفعله، فإذا حنث في ذلك لزمته الكفارة

The enacted oath is the oath someone swears about a future matter that he will do it or not do it. If he violates that, expiation is binding upon him.

ويمين اللغو: هو أن يحلف على أمر ماض، وهو يظن أنه كما قال، والأمر بخلافه، فهذه اليمين نرجو أن لا يؤاخذ الله تعالى بها صاحبها

The unintentional oath is that someone swears about a past affair thinking that it was as he says, but the matter was contrary to that. This [type of] oath, we hope that Allah ﷻ will not take its exponent to task for it.

والقاصد في اليمين والمكره والناسي سواء، ومن فعل المحلوف عليه مكرها أو ناسيا فهو سواء

Someone who intends an oath, and someone who is coerced or absent-

minded are the same [with regards to oath-taking]; whoever does that which he swore an oath to do under coercion or absent-mindedly it is [deemed] to be the same.

واليمين بالله تعالى، أو باسم من أسمائه، كالرحمن والرحيم، أو بصفة من صفات ذاته، كعزة الله وجلاله وكبريائه، إلا قوله «وعلم الله» فإنه لا يكون يمينا

The oath [is made]:

1. By Allah ﷻ,
2. Or by one of His names like ar-Raḥmān (the All-Merciful) and ar-Raḥīm (the Most Merciful),
3. Or by one of the attributes of His essence, like 'the honour of Allah', 'His majesty' and 'His magnificence',

but not by saying 'by the knowledge of Allah' for that is not [counted as] an oath.

وإن حلف بصفة من صفات الفعل، كغضب الله وسخطه لم يكن حالفا

If someone swears an oath by the attributes of action, such as 'the wrath of Allah' and the 'displeasure of Allah', he is not considered an oath-taker (*ḥālif*).

ومن حلف بغير الله تعالى لم يكن حالفا، كالنبي صلى الله عليه وسلم، والقرآن، والكعبة

Whoever swears an oath by [something] other than Allah ﷻ is not an oath-taker (*ḥālif*), such as [by] the Prophet ﷺ, the Qur'ān and the Ka'bah.

والحلف بحروف القسم، وحروف القسم ثلاثة: الواو كقوله: واللهِ، والباء كقوله: باللهِ، والتاء كقوله: تاللهِ

The oath is [made with] the letters of oath, and the letters of oath are three:

1. The *wāw* (و), like one's saying, "*wa'llāhi* – by Allah!",
2. The *bā'* (ب), like one's saying, "*bi'llāhi* – by Allah!", and

3. The *tā’* (ت), like one’s saying, “*ta’llāhi* – by Allah!”.

وقد تضمر الحروف فيكون حالفا، كقوله «اللهِ لا أفعل كذا»

Sometimes, the letters of oath are implied so that one is [still] an oathtaker (*ḥālif*), like one’s saying, “Allah![1177] I will not do such-and-such.”

وقال أبو حنيفة رحمه الله تعالى: إذ قال «وحق الله» فليس
بحالف

Abū Ḥanīfah, may Allah have mercy on him, said that when one says, “*wa ḥaqqi’llāhi* – by the right of Allah!” he is not an oath-taker (*ḥālif*).

و إذا قال «أقسم» أو «أقسم بالله» أو «أحلف» أو «أحلف
باللهِ» أو «أشهد» أو «أشهد باللهِ» فهو حالف

When he says:
1. “I swear,”
2. “I swear by Allah,”
3. “I swear an oath,”
4. “I swear an oath, by Allah,”
5. “I testify,” or
6. “I testify, by Allah,” then he is an oath-taker (*ḥālif*).

وكذلك قوله «وعهد اللهِ» «وميثاقه»

Likewise, his saying,
1. “By the compact of Allah,” and
2. “By His covenant.”

و إن قال :«عليّ نذر»، أو «نذر الله»، فهو يمين

If he says, “A pledge is binding on me,” or “The pledge of Allah [is binding on me],” then it is an oath.

و إن قال «إن فعلت كذا فأنا يهودي أو نصراني أو مجوسي أو
مشرك أو كافر» كان يمينا

If he says, “If I do such-and-such, then I am a Jew, Christian, Magian, idolator or a disbeliever,” it is an oath.

و إن قال «فعلي غضب الله، أو سخطه» فليس بحالف ، وكذلك
إن قال «إن فعلت كذا فأنا زانٍ»، أو «شارب خمر»، أو «آكل
ربا» فليس بحالف

If he says, "Upon me be the wrath of Allah," or "…His displeasure," then he is not an oath-taker (*ḥālif*), and likewise, if he says, "If I do such-and-such, then I am a fornicator, drunkard or usurer," then is not an oath-taker (*ḥālif*).

Expiation for the Breach of Oath

وكفارة اليمين: عتق رقبة، يجزئ فيها ما يجزئ في الظهار، و إن
شاء كسا عشرة مساكين كل واحد ثوبا فما زاد، وأدناه ما يجوز فيه
الصلاة، و إن شاء أطعم عشرة مساكين، كالإطعام في كفارة الظهار،
فإن لم يقدر على أحد هذه الأشياء الثلاثة صام ثلاثة أيام متتابعات

The expiation for [the breach of] an oath is to set a slave free, for which that [slave] who is sufficient in the [case of] injurious comparison (*ẓihār*) suffices.[1178] If he wants, he may clothe ten destitute people, each with one garment or more, and the minimum is that in which prayer is valid. If he wants, he may feed ten needy persons, like the feeding for the expiation of injurious comparison (*ẓihār*).[1179] If he is unable [to fulfil] any of these three things, he should fast for three consecutive days.

فإن قدم الكفارة على الحنث لم يجزه

If someone advances the expiation prior to the violation [of the oath], it does not suffice him.[1180]

ومن حلف على معصية، مثل أن لا يصلي، أو لا يكلم أباه، أو
ليقتلن فلانا، فينبغي أن يحنث نفسه و يكفر عن يمينه

Whoever makes an oath for [to perpetrate] a wrong action, for example that he will not pray, that he will not speak to his parents, or that he will kill so-and-so, should render himself a violator [of the oath] and pay the expiation for [the violation of] his oath.[1181]

و إذا حلف الكافر ثم حنث في حال الكفر، أو بعد إسلامه، فلا حنث عليه

When a non-Muslim swears an oath, then later violates [it] in the condition of *kufr*, or after becoming Muslim, there is no [guilt of] violating [an oath] upon him.

ومن حرم على نفسه شيئا مما يملكه لم يصر محرما، وعليه إن استباحه كفارة يمينٍ

Whoever prohibits himself something which he owns, it does not become prohibited [for him], but if he [then] permits [himself] it, an expiation of the [breach of] oath is due from him.

فإن قال «كل حلال علي حرام» فهو على الطعام والشراب، إلا أن ينوي غير ذلك

If someone says, "All permissible [things] are unlawful to me," then that is [understood as being] in terms of food and drink, unless he intends otherwise.

ومن نذر نذرا مطلقا فعليه الوفاء به

Whoever vows an unconditional vow must fulfil it.

و إن علق نذرا بشرط فوجد الشرط فعليه الوفاء بنفس الذنر

If someone attaches a vow to a condition and the condition exists, then it is incumbent upon him to honour that very vow.

وروى أن أبا حنيفة رحمه الله تعالى رجع عن ذلك وقال: إذا قال «إن فعلت كذا فعلى حجة، أو صوم سنة، أو صدقة ما أملكه»، أجزأه من ذلك كفارة يمين، وهو قول محمد رحمه الله تعالى

It has been reported that Abū Ḥanīfah, may Allah have mercy on him, retracted that [verdict] and said, "When someone says, 'If I do such-and-such, then a *ḥajj* is obligatory upon me," or "…fasting for a year…," or "…[giving as] *ṣadaqah* whatever I own…," it is sufficient for him to expiate the oath. This is also the verdict of Muḥammad, may Allah have mercy on him.

Swearing an Oath Not to Enter a House, etc.

ومن حلف لا يدخل بيتا فدخل الكعبة، أو المسجد، أو البيعة،
أو الكنيسة لم يحنث

Whoever swears an oath [that] he will not enter any house, and he enters the Ka‘bah, a mosque, synagogue or church has not violated [his oath].

ومن حلف أن لا يتكلم فقرأ القرآن في الصلاة لم يحنث

Whoever swears an oath not to speak, then recites the Qur’ān in the prayer has not violated [his oath].

ومن حلف لا يلبس هذا الثوب وهو لابسه فنزعه في الحال لم
يحنث، وكذا إذا حلف لا يركب هذه الدابة وهو راكبها فنزل في
الحال لم يحنث وإن لبث ساعة حنث

Whoever swears an oath [that] he will not don this [particular] garment whilst wearing it and he removes it immediately, has not violated [his oath], and likewise, if he swears an oath that he will not mount this [particular] animal whilst mounted on it and he immediately dismounts [from it], has not violated [his oath], but if he remains [mounted] for a moment [longer], he has violated [his oath].

ومن حلف لا يدخل هذه الدار وهو فيها لم يحنث بالقعود، حتى
يخرج ثم يدخل

Whoever swears an oath [that] he will not enter this house whilst inside it, has not violated [his oath] by sitting [there] unless he exits [it and] later enters [it] again.

ومن حلف لا يدخل دارا فدخل دارا خرابا لم يحنث

Whoever swears an oath [that] he will not enter any house, and [then] he enters a derelict building, has not violated [his oath].

ومن حلف لا يدخل هذه الدار فدخلها بعد ما انهدمت وصارت
صحراء حنث

Whoever swears an oath [that] he will not enter this [particular] house,[1182]

and he enters it after it had been demolished and become desolate, has violated [his oath].

ومن حلف لا يدخل هذا البيت فدخل بعد ما انهدم لم يحنث

Whoever swears an oath [that] he will not enter this [particular] home,[1183] and he enters it after it has been demolished, has not violated [his oath].

ومن حلف أن لا يكلم زوجة فلان فطلقها فلان ثم كلمها حنث

Whoever swears an oath that he will not speak to the wife of so-and-so, and that person divorces her, then later [the person who swore the oath] speaks to her, he has violated [his oath].

ومن حلف أن لا يكلم عبد فلان، أو لا يدخل دار فلان، فباع فلان عبده أو داره ثم كلم العبد ودخل الدار لم يحنث

Whoever swears an oath that he will not speak to the slave of so-and-so, or that he will not enter the house of so-and-so, and [then] that person sells his slave or his house, then later [the person who swore the oath] speaks to the slave and enters the house, he has not violated [his oath].

وإن حلف لا يكلم صاحب هذا الطيلسان فباعه ثم كلمه حنث، وكذلك إذا حلف أن لا يتكلم هذا الشاب فكلمه بعد ما صار شيخا حنث

If one swears an oath that he will not speak to the owner of this [particular] large outer garment (pallium), and [the owner] sells it, then later [the person who swore the oath] speaks to him, he has violated [his oath], and likewise, when he swears an oath that he will not talk to this [particular] youth and he speaks to him after [that youth] becomes an old man, he has violated [his oath].

Swearing an Oath Not to Eat Food

وإن حلف أن لا يأكل لحم هذا الحمل فصار كبشا فأكله حنث

If one swears an oath that he will not eat the meat of this [particular] foetus [of an animal], [then later] it [develops and] becomes a ram and he eats

[of] it, he has violated [his oath].

وإن حلف أن لا يأكل من هذه النخلة فهو على ثمرها

If he swears an oath that he will not eat from this [particular] date-palm, [the oath relates to] its fruit.

ومن حلف أن لا يأكل من هذا البسر فصار رطبا فأكله لم يحنث، وإن حلف لا يأكل بسرا فأكل رطبا لم يحنث

Whoever swears an oath that he will not eat this [particular] unripe date, then [later] it ripens and he eats it, he has not violated [his oath]. And if he swears an oath [that] he will not eat any unripe date and he eats a ripe one, he has not violated [his oath].

وإن حلف أن لا يأكل رطبا فأكل بسرا مذنبا حنث عند أبي حنيفة رحمه الله تعالى

If he swears an oath that he will not eat a fresh date and he eats an unripe one [which is] ripe at its rear, he has violated [his oath], according to Abū Ḥanīfah, may Allah have mercy on him.

ومن حلف أن لا يأكل لحما فأكل لحم السمك لم يحنث

Whoever swears an oath that he will not eat meat and then eats the meat of fish, has not violated [his oath].

ولو حلف أن لا يشرب من دجلة فشرب منها بإناء لم يحنث حتى يكرع منها كرعا في قول أبي حنيفة رحمه الله تعالى

If someone swears an oath that he will not drink from the [river] Tigris[1184] and drinks a pot from it, he has not violated [his oath] until he sips a sip from it [with his mouth], according to Abū Ḥanīfah, may Allah have mercy on him.

ومن حلف أن لا يشرب من ماء دجلة فشرب منها بإناء حنث

If someone swears an oath that he will not drink from the water of the [river] Tigris[1185] and drinks a pot from it, he has violated [his oath].

ومن حلف أن لا يأكل من هذه الحنطة فأكل من خبزها لم يحنث

Whoever swears an oath that he will not eat of this [particular] wheat and then eats of its bread, he has not violated [his oath].

ولو حلف أن لا يأكل من هذا الدقيق فأكل من خبزه حنث، ولو استفّه كما هو لم يحنث

If he swears an oath that he will not eat of this [particular] flour, and then eats of its bread, he has violated [his oath], but if he puts it into his mouth just as it was, [then] he has not violated [his oath].

و إن حلف أن لا يتكلم فلانا فكلمه وهو بحيث يسمع إلا أنه نائم حنث

If someone swears an oath that he will not speak to so-and-so, and he talks to him such that he could have heard him but that he was asleep, he has violated [his oath].

و إن حلف لا يكلمه إلا بإذنه فأذن له ولم يعلم بالإذن حتى كلمه حنث

If he swears an oath that he will not speak to him without his permission, and [the other] permits him but he does not know of the permission to him such that he talks to him, he has violated [his oath].

و إذا استحلف الوالي رجلا ليعلمه بكل داعر دخل البلد، فهو على حال ولايته خاصة

When the governor (*wālī*) requires from a man on oath to tell him of every indecent person who enters the city, then that applies to [the term of] his [own] governorship only.[1186]

ومن حلف أن لا يركب دابة فلان فركب دابة عبده المأذون لم يحنث

Whoever swears an oath that he will not mount the animal of so-and-so, and then mounts the animal of his authorised slave, has not violated [his

oath].

ومن حلف أن لا يدخل هذه الدار فوقف على سطحها، أو دخل دهليزها حنث، و إن وقف في طاق الباب بحيث إذا أغلق الباب كان خارجا لم يحنث

Whoever swears an oath that he will not enter this [particular] home then stands on its roof or enters its foyer, has violated [his oath], but if he stands in the arch of the door in such a way that if the door was closed he would be [on the] outside, [then] he has not violated [his oath].

ومن حلف أن لا يأكل الشواء، فهو على اللحم دون الباذنجان والجزر

Whoever swears an oath that he will not eat roasts, then that applies to meat [only] and not to aubergines and carrots.

ومن حلف أن لا يأكل الطبيخ فهو على ما يطبخ من اللحم

Whoever swears an oath that he will not eat cooked food, then that applies to whatever meat is cooked.[1187]

ومن حلف أن لا يأكل الرؤوس، فيمينه على ما يكبس في التنانير، ويباع في المصر

Whoever swears an oath that he will not eat heads, then his oath applies to what is cooked in ovens and sold in the city.

ومن حلف أن لا يأكل الخبز فيمينه على ما يعتاد أهل البلد أكله خبزا، فإن أكل خبز القطائف أو خبز الأرز بالعراق لم يحنث

Whoever swears an oath that he will not eat bread, then his oath applies to what city inhabitants are accustomed to with regards to eating bread. Thus, if he eats *qaṭā'if* bread (a pastry), or rice bread in Iraq,[1188] he has not violated [his oath].

ومن حلف أن لا يبيع أو لا يشتري أو لا يؤاجر فوكل من فعل بذلك لم يحنث

Whoever swears an oath that he will not sell, buy, or lease [anything], and then authorises an agent who does that [for him], he has not violated [his oath].

ومن حلف أن لا يجلس على الأرض فجلس على بساط أو على حصير، لم يحنث

Whoever swears an oath that he will not sit on the ground, then sits on a rug or on a mat, he has not violated [his oath].

ومن حلف أن لا يجلس على سرير، فجلس على سرير فوقه بساط حنث، وإن جعل فوقه سريرا آخر فجلس عليه لم يحنث

Whoever swears an oath that he will not sit on a [particular] bed, then sits on a bed upon which there is a rug, he has violated [his oath],[1189] but if he places another bed on the top of that [particular bed] and sits upon that, he has not violated [his oath].[1190]

وإن حلف أن لا ينام على فراش فنام عليه وفوقه قرام حنث وإن جعل فوقه فراشا آخرفنام عليه لم يحنث

If someone swears an oath that he will not sleep on a [particular] mattress and then does sleep upon it, and a blanket was [spread] over it, he has violated [his oath], but if he places another mattress on the top of it and sleeps upon that, then he has not violated [his oath].

ومن حلف بيمين، وقال «إن شاء الله» متصلا بيمينه، فلا حنث عليه

Whoever swears an oath and says, "*in shā' Allāh* (Allah-willing)" attached to his oath, there is no violation [of the oath] upon him.[1191]

Swearing an Oath on Time

وإن حلف ليأتينه إن استطاع فهذا على استطاعة الصحة دون القدرة

If one swears an oath that he shall definitely come to him if he can, then that is [dependent] upon the ability of health and not [of] capacity.[1192]

و إن حلف أن لا يكلمه حينا أو زمانا، أو الحين أو الزمان فهو
على ستة أشهر، وكذلك الدهر عند أبي يوسف ومحمد رحمهما الله
تعالى

If he swears an oath that he shall not talk to him for an appointed time (*ḥīn*) or a period (*zamān*), or for the appointed time (*al-ḥīn*) or the period (*al-zamān*), then that is for six months. And it is likewise [if he uses the word] time (*ad-dahr*), according to Abū Yūsuf and Muḥammad, may Allah have mercy on them.

ولو حلف أن لا يكلم أياما فهو على ثلاثة أيام

If he swears an oath that he will not speak for some days (*ayyām*), he is [bound by the oath] for three days.

ولو حلف أن لا يكلمه الأيام فهو على عشرة أيام عند أبي حنيفة
رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى: هو
على أيام الأسبوع

If he swears an oath that he will not speak to him for days (*al-ayyām*), then he is [bound] for ten days, according to Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that he is [bound] for the days of the week.[1193]

ولو حلف أن لا يكلمه الشهور فهو على عشرة أشهر عند أبي
حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى:
هو على اثني عشر شهرا

If he swears an oath that he will not speak to him for months, he is [bound] for ten months, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he is [bound] for twelve months.

و إذا حلف لا يفعل كذا تركه أبدا

If he swears an oath that he will not do such-and-such, he is to abstain from it forever.

وإن حلف ليفعلن كذا ففعله مرة واحدة بر في يمينه

If he swears an oath that he will definitely do such-and-such and he does it once, he has fulfilled his oath.

ومن حلف لا تخرج امرأته إلا بإذنه، فأذن لها مرة واحدة فخرجت ورجعت ثم خرجت مرة أخرى بغير إذنه حنث، ولا بد من الإذن في كل خروج

Whoever swears an oath [that] his wife will not go out without his permission, and he gives her permission once, so she exits and returns, then later she goes out again another time without his permission, he has violated [his oath]. There must be a [separate] separated authorisation for each time she goes out.

وإن قال «إلا أن آذن لك» فأذن لها مرة واحدة ثم خرجت بعدها بغير إذنه لم يحنث

If he says, "…unless I permit you," and he permits her once [only], then later she goes out after that without his permission, he has not violated [his oath].

وإذا حلف أن لا يتغدى، فالغداء هو الأكل من طلوع الفجر إلى الظهر، والعشاء من صلاة الظهر إلى نصف الليل، والسحور من نصف الليل إلى طلوع الفجر

When someone swears an oath that he will not eat breakfast, then breakfast [refers to] the meal from the dawning of the *fajr* up until *ẓuhr* [time], supper[1194] (*'ashā'*) is [the meal] from the *ẓuhr* prayer until midnight and the pre-dawn meal (*saḥūr*) is [the meal taken] between midnight up until the dawning of the *fajr*.

وإن حلف ليقضين دينه إلى قريب فهو ما دون الشهر، وإن قال «إلى بعيد» فهو أكثر من الشهر

If someone swears an oath that he will definitely pay off his debt soon (*qarīb*),[1195] then it [is whatever] is less than a month,[1196] but if he said, "…later (*ilā ba'īd*)," then it is more than a month.[1197]

ومن حلف لا يسكن هذه الدار فخرج منها بنفسه وترك فيها أهله ومتاعه حنث

Whoever swears an oath [that] he will not reside in this [particular] home, and then he himself leaves it but keeps his family and luggage there, he has violated [his oath].

ومن حلف ليصعدن السماء أو ليقلبن هذا الحجر ذهبا انعقدت يمينه وحنث عقيبها

Whoever swears an oath [that] he will definitely rise up to the sky, or [that] he will definitely convert this [particular] stone into gold, his oath takes effect and he has violated [it] immediately following [the making of] it.[1198]

ومن حلف ليقضين فلانا دينه اليوم فقضاه ثم وجد فلان بعضه زيوفا أو نبهرجة، أو مستحقة لم يحنث الحالف، وإن وجدها رصاصا أو ستوقة حنث

Whoever swears an oath [that] he will definitely pay off his debt to so-and-so that [very] day,[1199] and he pays him, then later that person finds that some of it is counterfeit, false or owned [by someone else], the person who swore the oath has not violated [his oath], but if [the creditor] finds it [completely composed of] lead or spurious, [the person who swore the oath] has violated [his oath].

ومن حلف لا يقبض دينه درهما دون درهم فقبض بعضه، لم يحنث حتى يقبض جميعه متفرقا

Whoever swears an oath [that] he will not take his debt dirham by dirham,[1200] and he does take some of it, he has not violated [his oath] until he takes all of it separately.

وإن قبض دينه في وزنتين لم يتشاغل بينهما إلا بعمل الوزن لم يحنث، وليس ذلك بتفريق

If he takes [repayment of] his debt in two [separate] weighings between which he did not occupy [himself in anything] other than the act of weighing, [then] he has not violated [the oath], and that is not [considered to have been

done] with separation.[1201]

ومن حلف ليأتين البصرة فلم يأتها حتى مات، حنث في آخر جزء من أجزاء حياته

Whoever swears an oath [that] he shall definitely come to Baṣra [or any other specified city or location] and he does not come, before he dies, he will have violated [his oath] in the final stage of [all] the stages of his life.

كتاب الدعوى

DA‘WĀ – LAWSUITS

المدعي: من لا يجبر على الخصومة إذا تركها، والمدعى عليه: من يجبر على الخصومة

The plaintiff (*mudda‘ī*) is whoever is not compelled [back] into a litigation whenever he abandons it, but the defendant (*mudda‘ā ‘alayhi*) is whoever is compelled to litigation.

ولا تقبل الدعوى حتى يذكر شيئا معلوما في جنسه وقدره، فإن كان عينا في يد المدعى عليه كلف إحضارها يشير إليها بالدعوى، و إن لم تكن حاضرة ذكر قيمتها

The suit is not accepted unless [the plaintiff] mentions something specific in its type and [in] its amount. Thus, if it is an item in the possession of the defendant, he is charged to present it so that he may point it out for the claim, but if it is not present, he must mention its value.

و إن ادعى عقارا حدده، وذكر أنه في يد المدعى عليه، وأنه يطالبه به، و إن كان حقًا في الذمة ذكر أنه يطالبه به

If [the plaintiff] sues for real estate, he should define it and [also] mention that it is in the possession of the defendant, and that he (i.e. the plaintiff) is seeking it. If it is a personal right, [the plaintiff] should mention that he is seeking it.

فإذا صحت الدعوى سأل القاضي المدعى عليه عنها، فإن اعترف قضى عليه بها، و إن أنكر سأل المدعي البينة، فإن أحضرها قضى بها، و إن عجز عن ذلك وطلب يمين خصمه استحلفه عليها

When the suit is established, the judge (*qāḍī*) questions the defendant in relation to it. If he confesses, [the judge] decides against him in it, but if he

denies, [the judge] demands evidence from the plaintiff. If [the plaintiff] produces [the evidence], [the judge] decides by it, but if [the plaintiff] is unable to do that and he demands an oath from his adversary, [the defendant] is made to swear an oath upon the suit.

وإن قال «لي بينة حاضرة» وطلب اليمين لم يستحلف عند أبي حنيفة رحمه الله تعالى

If [the plaintiff] says, “I have evidence present,” and he demands an oath, [the defendant] is not made to swear an oath, according to Abū Ḥanīfah, may Allah have mercy on him.

ولا ترد اليمين على المدعي، ولا تقبل بينة صاحب اليد في الملك المطلق

The oath is not returned to the plaintiff.[1202]

Evidence from the person who owns the property is not accepted in unspecified ownership.[1203]

وإذا نكل المدعى عليه اليمين قضي عليه بالنكول، وألزمه ما ادعى عليه

When the defendant refuses to take the oath, the judge decides against him on the refusal to take the oath (*nukūl*), and whatever has been claimed against him becomes binding upon him.

وينبغي للقاضي أن يقول له: «إني أعرض عليك اليمين ثلاثا، فإن حلفت وإلا قضيت عليك بما ادعاه» وإذا كرر العرض ثلاث مرات قضى عليه بالنكول

The judge ought to say to him: “I offer you [to take] the oath thrice, so if you do take the oath [it is better], but if not, I shall decide [the case] against you regarding whatever he has claimed.”

When [the judge] has repeated the proposal three times, he decides against him on the refusal to take the oath (*nukūl*).

وإن كانت الدعوى نكاحا لم يستحلف المنكر عند أبي حنيفة رحمه الله تعالى

If the claim is of marriage, the defendant should not be administered an oath, according to Abū Ḥanīfah, may Allah have mercy on him.

ولا يستحلف في النكاح، والرجعة، والفيء في الإيلاء، والرق، والاستيلاد، والنسب، والولاء، والحدود واللعان

He will not be made to swear an oath in [the cases of] marriage (*nikāḥ*),[1204] a revocable divorce (*raj'ah*),[1205] the rescission of an oath to abstain from sexual intercourse with one's wife for a period of four months or more (*īlā'*),[1206] slavery (*riqq*),[1207] the paternity case with a slave-woman (*istīlād*),[1208] paternity (*nasab*),[1209] clientage (*walā'*),[1210] cases involving *ḥadd* punishments[1211] and imprecation by both parties (*li'ān*).[1212]

وقالا رحمهما الله تعالى: يستحلف في ذلك كله، إلا في الحدود واللعان

They,[1213] may Allah have mercy on them, however, said that one is administered an oath in all of these [cases] except in [the cases of] *ḥudūd* and *li'ān*.

وإذا ادعى اثنان عينا في يد آخر وكل واحد منهما يزعم أنها له وأقاما البينة، قضى بها بينهما، وإن ادعى كل واحد منهما نكاح امرأة وأقاما البينة لم يقض بواحدة من البينتين، ويرجع إلى تصديق المرأة لأحدهما

When two persons claim one [and the same] item which is in the possession of another, and each of the two alleges that it is his, and both of them establish evidence, [the judge] decides in that [to divide it] between both of them.[1214] If each [one] of the two claim to be married with one [and the same] woman, and both of them provide evidence [to his own claim], then he (the judge) does not decide on [the basis of] either of the two pieces of evidences, and he resorts to the confirmation of the woman of either of the two [claimants].

وإن ادعى اثنان كل واحد منهما أنه اشترى منه هذا العبد وأقاما البينة فكل واحد منهما بالخيار: إن شاء أخذ نصف العبد بنصف الثمن، وإن شاء ترك

If two persons make a claim, such that each of the two [claims that he] bought this particular slave from [a third party], and both of them provide evidence, then each of the two has a choice:

1. If he wants, he may take half of the slave for half of the price,[1215] or
2. If he wants, he may abandon [the claim].

فإن قضى القاضي به بينهما فقال أحدهما «لا أختار» لم يكن للآخر أن يأخذ جميعه

If the judge decides between the two[1216] and one of them says, "I do not want [my half share of the slave]," it is not valid for the other to take the whole of him.

وإن ذكر كل واحد منهما تاريخا فهو للأول منهما، وإن لم يذكرا تأريخا ومع أحدهما قبض فهو أولى به

If each of the two mentions a date,[1217] then [the slave] belongs to the earlier of the two,[1218] but if they do not mention a date and one of the two has [current] possession [of the slave], he has more right to him.

وإن ادعى أحدهما شراء والآخر هبة وقبضا وأقاما البينة ولا تاريخ معهما فالشراء أولى من الآخر

If one of the two claims [to have acquired the slave through] 'purchase' and the other [claims to have been given him as a] 'gift' and they both took 'possession', and both of them establish evidence with no date [of ownership] for either of them, then the purchase has more right than the other [claim].

وإن ادعى أحدهما الشراء وادعت المرأة أنه تزوجها عليه فهما سواء

If one of the two claims [to have acquired the slave by] purchase and the woman claims that [the other party] married her by [giving] him [as a dowry to her],[1219] then both of them are equal [in their claims].

وإن ادعى أحدهما رهنا وقبضا والآخر هبة وقبضا فالرهن أولى

If one of the two claims [the slave was placed with him as a] pledge along with [his having taken] possession, and the other [claims] [he was given him

as a] gift along with [his having taken] possession, then the [person given him as a] pledge has more right.

وإن أقام الخارجان البينة على الملك والتاريخ فصاحب التاريخ الأقدم أولى

If two people who do not have possession establish evidence of [ownership of] property and a date [of ownership], then the one with the earlier date has more right.

وإن ادعيا الشراء من واحد وأقاما البينة على التاريخين فالأول أولى

If both of them claim buying from one [and the same] person, and both of them establish evidence for two [different] dates, then the [purchaser who bought it on the] first [date] has more right.[1220]

وإن أقام كل واحد منهما البينة على الشراء من الآخر وذكرا تاريخا فهما سواء

If each of the two establish evidence of purchasing from the other [person], and both of them mention one [and the same] date, then both of them are equal.[1221]

وإن أقام الخارج البينة على ملك مؤرخ وأقام صاحب اليد البينة على ملك أقدم تاريخا كان أولى

If an individual not having possession provides evidence of a dated ownership and someone having possession [also] establishes evidence of prior ownership, [the latter] has more right.

وإن أقام الخارج وصاحب اليد كل واحد منهما بينة بالنتاج فصاحب اليد أولى

If an individual not having possession and someone having possession both provide evidence regarding offspring[1222] [of an animal], then the person with possession has more right [to the claim].

وكذلك النسج في الثياب التي لا تنسج إلا مرة واحدة، وكذلك كل سبب في الملك لا يتكرر

It is likewise [the case with] the weaving of clothes which are woven only once, and every cause of ownership that does not repeat.[1223]

وإن أقام الخارج بينة على الملك المطلق وصاحب اليد بينة على الشراء منه كان صاحب اليد أولى، وإن أقام كل واحد منهما البينة على الشراء من الآخر ولا تاريخ معهما تهاترت البينتان

If the individual not having possession provides evidence regarding unqualified ownership, and the one with possession [of it provides] evidence of purchase from him, the one with possession has more right [to it]. If each of the two provide evidence of purchasing [it] from the other and neither of them has a date [of purchase], both evidences will contradict[1224] each other.[1225]

وإن قام أحد المدعيين شاهدين والآخر أربعة فهما سواء

If one of the two claimants produces two male witnesses, and the other [produces] four, both of them are equal.[1226]

ومن ادعى قصاصا على غيره فجحد استحلف، فإن نكل عن اليمين فيما دون النفس لزمه القصاص، وإن نكل في النفس حبس حتى يقر أو يحلف

Whoever files for retaliation (*qiṣāṣ*) against someone, and [the defendant] denies [it], is administered an oath. If he refuses to take the oath which is for retaliation for something other than for homicide,[1227] [the sentence of] retaliation is binding upon him, but if he refuses to take the oath for retaliation for homicide, he is detained until he confirms [the charge] or takes the oath.

وقال أبو يوسف ومحمد رحمهما الله تعالى : يلزمه الأرش فيهما

Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that compensatory payment (*arsh*) is binding upon him in both [cases].

وإذا قال المدعي «لي بينة حاضرة» قيل لخصمه «أعطه كفيلا بنفسك ثلاثة أيام»

When the plaintiff says, “I have evidence with me,” it is said to his adversary, “Give him a guarantor for yourself [within] three days.”[1228]

فإن فعل وإلا أمر بملازمته، إلا أن يكون غريبا على الطريق فيلازمه مقدار مجلس القاضي

If [the defendant] does so [it is better], otherwise, the order is given for someone to assiduously accompany him, unless he is a stranger on a journey, in which case he is assiduously accompanied for the measure of [the court] session of the judge.

وإن قال المدعى عليه «هذا الشيء أودعنيه فلان الغائب، أو رهنه عندي، أو غصبته منه» وأقام بينة على ذلك فلا خصومة بينه وبين المدعي

If the defendant says, “Such-and-such an absent person has entrusted me with this thing,” or “…he pledged it with me,” or “…I expropriated it from him,” and he produces evidence for that, then there remains no litigation between him and the plaintiff.

وإن قال «ابتعته من فلان الغائب» فهو خصم

If, however, he says, “I purchased it from so-and-so who is absent,” he remains a litigant.

وإن قال المدعي «سرق مني» وأقام البينة، وقال صاحب اليد «أودعنيه فلان» وأقام البينة لم تندفع الخصومة

If the plaintiff says, “It was stolen from me,” and produces evidence, and the one in possession of it says, “So-and-so deposited it with me,” and [also] produces evidence, the litigation is not [deemed] abandoned.

وإن قال المدعي «ابتعته من فلان» وقال صاحب اليد «أودعنيه فلان ذلك» سقطت الخصومة بغير بينة

If the plaintiff says, “I purchased it from so-and-so,” and the person in whose possession it is (i.e. the defendant) says, “That [person] so-and-so[1229] deposited this [item] with me,” the litigation is dropped without [production

of] evidence.

Oaths in Lawsuits

واليمين بالله تعالى دون غيره، ويؤكد بذكر أوصافه

The oath is [sworn] by Allah, exalted is He, and none other. It may be emphasised by mentioning His attributes.

ولا يستحلف بالطلاق، ولا بالعتاق

No oath is administered [on the pain of] divorce or setting [slaves] free.[1230]

ويستحلف اليهودي بالله الذي أنزل التوراة على موسى عليه السلام، والنصراني بالله الذي أنزل الإنجيل على عيسى عليه السلام، والمجوسي بالله الذي خلق النار، ولا يستحلفون في بيوت عبادتهم

A Jew is administered the oath, "[By] Allah Who revealed the Tawrāh to Mūsā (Moses) ﷺ," a Christian [the oath], "By Allah Who revealed the Injīl to 'Īsā (Jesus) ﷺ!," and a Magian [the oath], "By Allah Who created fire." They are not administered the oaths in their [respective] houses of worship.

ولا يجب تغليظ اليمين على المسلم بزمان ولا بمكان

It is not incumbent to strengthen the oath upon the Muslim by [requiring it at a] time[1231] or location.[1232]

ومن ادعى أنه ابتاع من هذا عبده بألف فجحده استحلف بالله ما بينكما بيع قائم فيه، ولا يستحلف بالله ما بعت

Whoever claims that he purchased from this [defendant] his slave for a thousand [dirhams], and [the defendant] denies [that], [the defendant] is required to swear an oath by Allah that: there is no established sale between the two of you regarding [the slave]. He is not required to swear the oath, "By Allah, I have not sold."

ويستحلف في الغصب بالله ما يستحق عليك رد هذه العين ولا رد قيمتها، ولا يستحلف بالله ما غصبت

In [the case of] expropriation, he is required to swear an oath by Allah that: he has no right against you to take back this item, nor [to require] the return of its value. He is not required to swear the oath, "By Allah, I have not expropriated [it]."

وفي النكاح بالله ما بينكما نكاح قائم في الحال

In [the case of] marriage, [the oath required is], "By Allah, there is currently no marriage enacted between the two of you."

وفي دعوى الطلاق بالله ما هي بائن منك الساعة بما ذكرت، ولا يستحلف بالله ما طلقها

In the case of a claimed divorce, [the oath required is], "By Allah that, as she describes, she is not finally divorced from you at this time." He is not required to swear an oath by Allah that he had not divorced her.

Miscellaneous Claims

وإن كانت دار في يد رجل ادعاها اثنان أحدهما جميعها والآخر نصفها وأقاما البينة فلصاحب الجميع ثلاثة أرباعها ولصاحب النصف ربعها عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: هي بينهما أثلاثا

If a building is in the possession of a man [but] two people lay claim to it, one [claiming] all of it and the other [claiming] a half of it, and both of them produce evidence, then the claimant of the whole [of the building] has three-quarters of it and the claimant of the half [of the building] has a quarter of it, according to Abū Ḥanīfah, may Allah have mercy on him. They,[1233] may Allah have mercy on them, however, said that it is [divided] between them both in thirds.[1234]

ولو كانت الدار في أيديهما سلمت لصاحب الجميع: نصفها على وجه القضاء، ونصفها لا على وجه القضاء

If the building is in the possession of both of them, it is surrendered to the claimant of the whole, a half of it by way of legal judgement, and a half of it without legal judgement.

و إذا تنازعا في دابة وأقام كل واحد منهما بينة أنها نتجت عنده وذكرا تاريخا وسن الدابة يوافق أحد التاريخين فهو أولى، و إن أشكل ذلك كانت بينهما

When two people have a dispute regarding an animal, and each of them produces evidence that it was born with him, and both of them mention a [different] date, and the age of the animal corresponds to one of the two dates, then [that claimant] has more right [to the animal], but if that [also] becomes confusing, then it is [shared] between the two of them.

و إذا تنازعا على دابة أحدهما راكبها والآخر متعلق بلجامها فالراكب أولى، وكذلك إذا تنازعا بعيرا وعليه حمل لأحدهما فصاحب الحمل أولى، وكذلك إذا تنازعا قميصا أحدهما لابسه والآخر متعلق بكمه فاللابس أولى

When both of them dispute regarding an animal, one of the two being mounted upon it and the other holding its bridle, then the rider has more right [to it]. Similarly, when both of them dispute a camel, and upon it there is the load of one of them, the owner of the load has more right [to it]. Similarly, when both of them dispute a shirt [when] one of them is wearing it and the other is holding on to its sleeve, the one wearing has more right [to it].

و إذا اختلف المتبايعان في البيع فادعى المشتري ثمنا وادعى البائع أكثر منه أو اعترف البائع بقدر من المبيع وادعى المشتري أكثر منه وأقام أحدهما البينة قضى له بها و إن أقام كل واحد منهما بينة كانت البينة المثبتة للزيادة أولى، فإن لم تكن لكل واحد منهما بينة قيل للمشتري: إما أن ترضى بالثمن الذي ادعاه البائع و إلا فسخنا البيع، وقيل للبائع: إما أن تسلم ما ادعاه المشتري من المبيع و إلا فسخنا البيع

When two traders dispute about a sale in which the buyer claims a price and the seller claims more than that [amount], or the seller acknowledges an amount of the commodity and the buyer claims more than that, and one of the two produces evidence, [the judge] decides in favour [of the one who produces evidence]. If each of them produces evidence, the evidence that establishes the excess is stronger. If neither of the two have evidence, it is

said to the buyer, “Either you agree on the price that the seller claims, or we repeal the sale,” and it is said to the seller, “Either you submit that commodity which the buyer claims, or we repeal the sale.”

فإن لم يتراضيا استحلف الحاكم كل واحد منهما على دعوى الآخر: ويبتدئ بيمين المشتري، فإذا حلفا فسخ القاضي البيع بينهما

If both of them are displeased, the judge (*ḥākim*) requires an oath from each of them against the claim of the other. He begins with the oath of the buyer. When both of them have sworn [their respective] oaths, the judge repeals the sale between them.

فإن نكل أحدهما عن اليمين لزمه دعوى الآخر

If either of the two refuses to take the oath, the claim of the other is binding upon him.

وإن اختلفا في الأجل أو في شرط الخيار أو في استيفاء بعض الثمن فلا تحالف بينهما، والقول قول من ينكر الخيار والأجل مع يمينه

If both of them disagree about the deadline,[1235] the option stipulated in the contract (*khiyār al-sharṭ*),[1236] or the furnishing of a portion of the price,[1237] then there is no swearing of oaths between them. The [legally decisive] statement is the statement of the one who denies the option (*khiyār*) and the deadline, with his oath.

وإن هلك المبيع ثم اختلفا في الثمن لم يتحالفا عند أبي حنيفة وأبي يوسف رحمهما الله تعالى والقول قول المشتري في الثمن، وقال محمد رحمه الله تعالى: يتحالفان، ويفسخ البيع على قيمة الهالك

If the object of sale (*mabī‘*) perishes,[1238] and then later they differ regarding the price, they do not swear oaths, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them. The [legally decisive] statement is the statement of the buyer with regards to the price. Muḥammad, may Allah have mercy on him, however, said that they both swear oaths, and the sale is annulled upon the value of the [commodity] that has perished.

و إن هلك أحد العبدين ثم اختلفا في الثمن لم يتحالفا عند أبي حنيفة رحمه الله تعالى إلا أن يرضى البائع أن يترك حصة الهالك، وقال أبو يوسف رحمه الله تعالى: يتحالفان و ينفسخ البيع في الحي وقيمة الهالك، وهو قول محمد رحمه الله تعالى

If one of two slaves [being sold together] perishes,[1239] then later they both [the buyer and seller] differ about the price [of that slave], they do not take oaths, according to Abū Ḥanīfah, may Allah have mercy on him, unless the seller consents to abandon the share of the [slave] who has perished. Abū Yūsuf, may Allah have mercy on him, said that they both swear oaths. The sale is repealed with respect to the living [slave] and to the value of the [slave] who perished, and that is [also] the verdict of Muḥammad, may Allah have mercy on him.[1240]

و إذا اختلف الزوجان في المهر فادعى الزوج أنه تزوجها بألف وقالت «تزوجتني بألفين» فأيهما أقام البينة قبلت بينته، و إن أقاما معا البينة فالبينة بينة المرأة، و إن لم تكن لهما بينة تحالفا عند أبي حنيفة رحمه الله تعالى ولم يفسخ النكاح، ولكن يحكم مهر المثل

When the two spouses disagree about the dowry, the husband claiming that he married her for a thousand [dirhams], and she saying, “You married me for two thousand,” whichever of the two produces evidence, his [or her] evidence is accepted. If both of them produce evidence together, the [legally decisive] evidence is that of the woman, but if she does not have [any] evidence, [then] they both take oaths, according to Abū Ḥanīfah, may Allah have mercy on him, and the marriage is not repealed, but it is adjudged that the customary dowry [a woman of her standing would receive] (*mahr al-mithl*) [be paid].

فإن كان مثل ما اعترف به الزوج أو أقل قضى بما قال الزوج، و إن كان مثل ما ادعته المرأة أو أكثر قضى بما ادعته المرأة، و إن كان مهر المثل أكثر مما اعترف به الزوج وأقل مما ادعته المرأة قضى لها بمهر المثل

If it is the same as what the husband acknowledges, or less [than that

amount], [the judge] decides according to what the husband says. If it is the same as what the wife claims, or more [than that], [the judge] decides according to what the wife claims. If the customary dowry [a woman of her standing would receive] is more than what the husband acknowledges and less than [that] which the wife claims, [the judge] gives judgement that she is to receive the customary dowry [a woman of her standing would receive].[1241]

وإذا اختلفا في الإجارة قبل استيفاء المعقود عليه تحالفا وترادا

When two parties[1242] disagree with regards to a lease before the objective is achieved, they take oaths and repay each other.[1243]

وإن اختلفا بعد الاستيفاء لم يتحالفا وكان القول قول المستأجر

If they differ after the achievement [of the objective], they do not swear oaths, and The [legally decisive] statement is the word of the employer.[1244]

وإن اختلفا بعد استيفاء بعض المعقود عليه تحالفا وفسخ العقد
فيما بقي وكان القول في الماضي قول المستأجر مع يمينه

If they differ after the fulfilment of a portion of what has been contracted upon, they take oaths and the contract regarding the remainder is repealed. The [legally decisive] statement about what is already past, is the statement of the employer [together] with his oath.

وإذا اختلف المولى والمكاتب في مال الكتابة لم يتحالفا عند أبي حنيفة
رحمه الله تعالى، وقالا رحمهما الله تعالى: يتحالفان وتفسخ الكتابة

When a master and a slave who has contracted to buy his freedom (*mukātab*) differ with regards to the property of the contract to buy his freedom (*kitābah*), they do not swear oaths, according to Abū Ḥanīfah, may Allah have mercy on him.[1245] They,[1246] may Allah have mercy on them, however, say that both of them swear oaths and the contract to buy his freedom is annulled.

وإذا اختلف الزوجان في متاع البيت فما يصلح للرجال فهو
للرجل، وما يصلح للنساء فهو للمرأة، وما يصلح لهما فهو للرجل

When spouses differ with regards to household goods, then whatever is

useful to men is for the man, and whatever is useful to women is for the woman, and whatever is useful to both of them is for the man.

فإن مات أحدهما واختلف ورثته مع الآخر، فما يصلح للرجال والنساء فهو للباقي منهما

If either of the two [spouses] dies, and his heirs differ with the other [spouse], then whatever is useful to men and women is for the survivor of the two.[1247]

وقال أبو يوسف رحمه الله تعالى: يدفع إلى المرأة ما يجهز به مثلها والباقي للزوج

Abū Yūsuf, may Allah have mercy on him, said that the woman[1248] is given the like of what she would normally be furnished with, and the remainder is for the husband.[1249]

و إذا باع الرجل جارية فجاءت بولدٍ فادعاه البائع، فإن جاءت به لأقل من ستة أشهر من يوم باعها فهو ابن البائع وأمه أم ولد له، فيفسخ البيع و يرد الثمن، و إن ادعاه المشتري مع دعوى البائع أو بعده فدعوى البائع أولى

When a man sells a slave-woman and she bears a child and the seller claims him, then if she had delivered him within less than six months from the day that he had sold her, he is the son of the seller, and his mother is *umm al-walad* to him [the seller]. The sale is annulled and the payment [is] returned. If the purchaser claims him [together] with the claim of the seller or [even] after it, then the claim of the seller is more rightful.

و إن جاءت به لأكثر من ستة أشهر و لأقل من سنتين لم تقبل دعوى البائع فيه، إلا أن يصدقه المشتري

If she bears him after more than six months but less than two years, the claim of the seller is not accepted for that unless the buyer confirms it.[1250]

و إن مات الولد فادعاه البائع وقد جاءت به لأقل من ستة أشهر لم يثبت النسب في الولد ولا الاستيلاد في الأم

If the child [of the slave-woman] dies and the seller claims him, and she had delivered him in less than six months, the paternity [of the seller] is not established, nor is the mother declared *umm al-walad*.

وإن ماتت الأم فادعاه البائع، وقد جاءت به لأقل من ستة أشهر يثبت النسب منه في الولد، وأخذه البائع، ويرد الثمن كله في قول أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يرد حصة الولد، ولا يرد حصة الأم

If the mother dies and the seller claims [the child], and she had delivered him in less than six months, his paternity of the child is established, and the seller takes him [into his custody] and returns the full payment [to the purchaser], according to the verdict of Abū Ḥanīfah, may Allah have mercy on him. They,[1251] may Allah have mercy on them, say that he returns the share of the child not the share of the mother.[1252]

ومن ادعى نسب أحد التوأمين يثبت نسبهما منه

Whoever claims the paternity of one of a pair of twins, his paternity of both of them is established.[1253]

كتاب الشهادات

SHAHĀDĀT – TESTIMONY

الشهادة: فرض تلزم الشهود أداؤها، ولا يسعهم كتمانها إذا طالبهم المدَّعي

Testimony is an obligation which the witnesses are bound to discharge, and it is not permissible for them to conceal it when the plaintiff demands [it] of them.

والشهادة بالحدود يخيّر فيها الشاهد بين الستر والإظهار، والستر أفضل، إلا أنه يجب أن يشهد بالمال في السرقة فيقول «أخذ المالَ» ولا يقول «سرق»

In testimony concerning *ḥudūd*, the witness is given the choice between concealing or disclosing, but concealing is better, except that it is incumbent upon him to testify with regards to the property in [the *ḥadd* of] theft, and so he says, "He took the property," and does not say, "He stole."

والشهادة على مراتب: منها الشهادة في الزنا، يعتبر فيها أربعة من الرجال، ولا تقبل فيها شهادة النساء

Testimony is of [various] levels, of which there is testimony concerning unlawful sexual intercourse. For this four men are a condition and the testimony of women is not accepted for it.

ومنها الشهادة ببقية الحدود والقصاص، تقبل فيها شهادة رجلين، ولا تقبل فيها شهادة النساء

Testimony for the other infringements of the limits (*ḥudūd*)[1254] and retaliation (*qiṣāṣ*); for them, the testimony of two men is accepted and the testimony of women is not accepted.

وما سوى ذلك من الحقوق تقبل فيها شهادة رجلين أو رجل
وامرأتين، سواء كان الحق مالا أو غير مال مثل النكاح والطلاق
والوكالة والوصية

In other rights, the testimony of two men or one man and two women is accepted, irrespective of whether that right is a property or something other than property, such as marriage, divorce, agency and bequests (*waṣiyyah*).

وتقبل في الولادة والبكارة والعيوب بالنساء في موضعٍ لا يطلع
عليه الرجال شهادة امرأة واحدة

For childbirth, virginity and feminine blemishes in areas which men do not behold, the testimony of a single woman is accepted.[1255]

ولا بد في ذلك كله من العدالة ولفظة الشهادة، فإن لم يذكر
الشاهد لفظة الشهادة وقال أعلم أو أتيقن لم تقبل شهادته

In all of these [cases], being a credible witness (*'adālah*)[1256] and wording [indicating] testimony (*shahādah*)[1257] are necessary, so that if the witness does not mention the wording of testimony and says, "I know…," or "I am sure…," his testimony is not accepted.

وقال أبو حنيفة رحمه الله تعالى: يقتصر الحاكم على ظاهر عدالة
المسلم، إلا في الحدود والقصاص، فإنه يسأل عن الشهود، و إن طعن
الخصم فيهم يسأل عنهم، وقال أبو يوسف ومحمد رحمهما الله تعالى
: لابد أن يسأل عنهم في السر والعلانية

Abū Ḥanīfah, may Allah have mercy on him, said that the judge (*ḥākim*) confines himself to the apparent probity (*'adālah*) of the Muslim, except in contravention of the legal limits (*ḥudūd*) and [cases of] retaliation (*qiṣāṣ*) where he investigates the witnesses.[1258] And if the litigant impugns them, [the judge] investigates them. Abū Yūsuf and Muḥammad, may Allah have mercy on them, say that it is important that he investigates into them in private and in the open.

وما يتحمله الشاهد على ضربين:

أحدهما: ما يثبت حكمه بنفسه، مثل البيع والإقرار والغصب والقتل، وحكم الحاكم، فإذا سمع ذلك الشاهد أو رآه وسعه أن يشهد به، وإن لم يشهد عليه، ويقول: أشهد أنه باع، ولا يقول: أشهدني

Whatever the witness undertakes [in testimony] is of two types:

First, that whose ruling is established by itself,[1259] for example sale, confession, expropriation, homicide and the judgement of the judge (*ḥākim*). So, when the witness hears that[1260] or sees it, it is permitted [for him] to testify to it, even if he is not asked to testify. He should say, “I testify that he sold [it],” and not say, “He has made me a witness.”

ومنه ما لا يثبت حكمه بنفسه، مثل الشهادة على الشهادة، فإذا سمع شاهدا يشهد بشيء لم يجز له أن يشهد على شهادته إلا أن يشهده، وكذلك لو سمعه يشهد الشاهد على شهادته لم يسع السامع أن يشهد على ذلك

[Another] example of [testimony is the second type], that whose ruling is not established of itself, for example, testifying to testimony. So, when someone hears a witness testifying to something, it is not permitted for [the second person] to testify to the testimony of [the witness] unless [the witness] makes him a witness [to the testimony]. Likewise, if he hears him calling a witness to testify to his testimony, it is not for the listener to bear witness to that.

ولا يحل للشاهد إذا رأى خطه أن يشهد إلا أن يذكر الشهادة

It is not lawful for the witness, when he sees [his own] script,[1261] to testify, unless he remembers the testimony [well].[1262]

Acceptable and Unacceptable Witnesses

ولا تقبل شهادة الأعمى، ولا المملوك، ولا المحدود في قذف وإن تاب، ولا شهادة الوالد لولده وولد ولده، ولا شهادة الولد لأبويه وأجداده

Testimony is not accepted from:

1. The blind,
2. Slaves,
3. Someone convicted of *ḥadd* [punishment] for unsubstantiated allegations of sexual misconduct (*qadhf*) – even if he repents, nor is
4. The testimony of a father [in favour] of his child or his grandchild [accepted], or
5. The testimony of a child [in favour] of his own parents or grandparents.

ولا تقبل شهادة أحد الزوجين للآخر، ولا شهادة المولى لعبده ولا لمكاتبه، ولا شهادة الشريك لشريكه فيما هو من شركتهما

Testimony is not accepted from:

6. Either spouse [in favour] of the other, nor is
7. The testimony of a master [in favour] of his slave [accepted], or [in favour] of his slave who has contracted to purchase his freedom (*mukātab*), nor is
8. The testimony of a [business] partner [accepted, in favour] of his partner concerning that in which they have partnership.

وتقبل شهادة الرجل لأخيه وعمه

The testimony of a man [in favour] of his brother or [in favour] of his paternal uncle is accepted.

ولا تقبل شهادة مخنث، ولا نائحة، ولا مغنية، ولا مدمن الشرب على اللهو، ولا من يلعب بالطيور، ولا من يغني للناس، ولا من يأتي بابا من الكبائر التي يتعلق بها الحد، ولا من يدخل الحمام بغير إزار، ولا من يأكل الربا

Testimony is not accepted from:

9. An effeminate person (*mukhannath*),
10. A professional mourner (*nā’iḥah*),
11. A [professional] female singer,
12. Someone who is a drunkard for the sake of amusement,[1263]
13. Someone who has a bird hobby,[1264]
14. Someone who sings for the public,

15. Someone who practises major wrong actions to which *ḥadd* [punishments] are attached,
16. Someone who enters the public baths without a loincloth,[1265]
17. Someone who consumes usury (*ribā*),

ولا المقامر بالنرد والشطرنج، ولا من يفعل الأفعال المستخفة كالبول على الطريق، والأكل على الطريق، ولا تقبل شهادة من يظهر سب السلف

18. Someone who gambles with backgammon and chess,[1266] and
19. Someone who practises disgusting acts such as urinating in the public roadway, eating on the path [etc.],
20. The testimony of someone who openly abuses the first community (*salaf*) is [also] not accepted.

وتقبل شهادة أهل الأهواء إلا الخطابية

The testimony of the people of erroneous views (*ahl al-ahwā'*)[1267] is accepted, except [that of] the *Khaṭṭābiyyah*.[1268]

وتقبل شهادة أهل الذمة بعضهم على بعض و إن اختلفت مللهم، ولا تقبل شهادة الحربي على الذمي

The testimony of the *dhimmīs* against each other is accepted, even if their religions differ.

The testimony of a non-Muslim from a land at war with the Muslims (*ḥarbī*) for or against a non-Muslim living under Muslim governance (*dhimmī*) is not accepted.

و إن كانت الحسنات أغلب من السيئات والرجل ممن يجتنب الكبائر قبلت شهادته و إن ألم بمعصية

If the good deeds [of a man] are predominant over [his] bad deeds, and the man is one who abstains from major wrong actions, his testimony is accepted, even though he may commit acts of disobedience (minor wrong actions).

وتقبل شهادة الأقلف، والخصي، وولد الزنا، وشهادة الخنثى جائزة

The testimony of the uncircumcised, eunuchs and the illegitimate [person] is accepted, and the testimony of a hermaphrodite is [also] valid.

Conformity of Testimony

و إذا وافقت الشهادة الدعوى قبلت، و إن خالفتها لم تقبل

When evidence conforms to claims, it is accepted, but if it contradicts them, it is not accepted.

و يعتبر اتفاق الشاهدين في اللفظ والمعنى عند أبي حنيفة رحمه الله تعالى، فإن شهد أحدهما بألف والآخر بألفين لم تقبل شهادتهما عند أبي حنيفة رحمه الله تعالى ، و قال أبو يوسف و محمد رحمهما الله تعالى: تقبل بالألف

The unanimity of two male witnesses in word and meaning is taken into account, according to Abū Ḥanīfah, may Allah have mercy on him. So if one of the two testifies for one thousand, and the other for two thousand, their testimony is not accepted,[1269] according to Abū Ḥanīfah, may Allah have mercy on him. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, say that it is accepted for one thousand.[1270]

و إن شهد أحدهما بألف والآخر بألف وخمس مائة والمدعي يدعي ألفا وخمس مائة قبلت شهادتهما بألف

If one of the two testifies for one thousand, and the other for one thousand five hundred, and the plaintiff claims one thousand five hundred, their testimony is accepted for one thousand.

و إذا شهدا بألف وقال أحدهما « قضاه منها خمس مائة» قبلت شهادتهما بألف، ولم يسمع قوله إنه قضاه منها خمس مائة إلا أن يشهد معه آخر، و ينبغي للشاهد إذا علم ذلك أن لا يشهد بألف حتى يقر المدعي أنه قبض خمس مائة

When both of them testify that it was one thousand, and one of them says, “He has [already] paid him five hundred of that,” their testimony regarding the one thousand is accepted but his statement, “He has paid him five

hundred of that," is not listened to unless another [witness] testifies with him. It is essential for the witness that when he learns that, he does not testify regarding the one thousand until the plaintiff confirms that he has taken possession of the five hundred.

و إذا شهد شاهدان أن زيدا قتل يوم النحر بمكة وشهد آخران أنه
قتل يوم النحر بالكوفة واجتمعوا عند الحاكم لم تقبل الشهادتين،
فإن سبقت إحداهما وقضي بها ثم حضرت الأخرى لم تقبل

When two [male] witnesses testify that Zayd was killed on the day of sacrifice (*naḥr*) in Makkah, and two others testify that he was killed on the day of sacrifice (*naḥr*) in Kufa, and they get together with the judge (*ḥākim*), neither of the testimonies is accepted. If either of the two [testimonies] precedes [the other] and [the judge] gives judgement according to that, then later the other [testimony] emerges, it is not accepted.[1271]

ولا يسمع القاضي الشهادة على جرح ولا نفي ولا يحكم بذلك إلا
ما استحق عليه

The judge does not listen to testimony of invalidation (*jarḥ*) or negation (*nafy*), and he does not issue a verdict based upon it, except that which is a right [for someone].[1272]

ولا يجوز للشاهد أن يشهد بشيء لم يعاينه، إلا النسب والموت
والنكاح والدخول وولاية القاضي، فإنه يسعه أن يشهد بهذه
الأشياء إذا أخبره بها من يثق به

It is not permitted for a witness to testify [regarding] that thing which he did not see with his own eyes, except for paternity, death, marriage, consummation and the jurisdiction of the judge. He has the capacity to testify regarding these when he considers the one who informs him of them to be reliable.

والشهادة على الشهادة جائزة في كل حق لا يسقط بالشبهة، ولا
تقبل في الحدود والقصاص

Testimony against testimony is permitted in [the case of] every right

which does not lapse due to an ambiguity, but it is not accepted in cases of *ḥadd* punishment and retaliation (*qiṣāṣ*).

وتجوز شهادة شاهدين على شهادة شاهدين، ولا تقبل شهادة
واحد على شهادة واحد

The testimony of two [male] witnesses against the testimony of two [other male] witnesses is permitted, but the testimony of one [male witness] against the testimony of one [other male witness] is not accepted.

وصفة الإشهاد أن يقول شاهد الأصل لشاهد الفرع: اشهد
على شهادتي أني أشهد أن فلان ابن فلان أقر عندي بكذا
وأشهدني على نفسه

The procedure of testimony is that the witness of the source (*shāhid al-aṣl*)[1273] (or primary witness) says to the witness of the subsidiary (*shāhid al-far'*)[1274](or secondary witness), "Testify to my testimony that I bear witness that so-and-so, the son of so-and-so, confirmed to me regarding such-and-such, and he has made me a witness for himself."

وإن لم يقل أشهدني على نفسه جاز

If he does not say, "He has made me a witness for himself," it is [still] valid.

ويقول شاهد الفرع عند الأداء: أشهد أن فلانا أقر عنده بكذا
وقال لي: اشهد على شهادتي بذلك فأنا أشهد بذلك

The secondary witness, at the delivery [of his testimony], says, "I testify that so-and-so confirmed to him regarding such-and-such, and he said to me, 'Testify to my testimony regarding that,' hence I testify to that."

ولا تقبل شهادة شهود الفرع إلا أن يموت شهود الأصل أو يغيبوا
مسيرة ثلاثة أيام فصاعدا أو يمرضوا مرضا لا يستطيعون معه
حضور مجلس الحاكم

The testimony of the secondary witness is not accepted unless [all] the primary witnesses die, they are absent at a distance of three days [travel] or

more, or they fall ill to such an extent that, due to it, they are unable to attend the session of the judge (*ḥākim*).

فإن عدل شهود الأصل شهود الفرع جاز، وإن سكتوا عن تعديلهم جاز، وينظر القاضي في حالهم

If the secondary witnesses declare the primary witnesses to be honest it is valid, but if they remain silent regarding their honesty, it is [also] valid, and the judge [then] investigates their[1275] circumstances.

وإن أنكر شهود الأصل الشهادة لم تقبل شهادة شهود الفرع

If the primary witnesses decline to testify, the testimony of the secondary witnesses is not accepted.

وقال أبو حنيفة رحمه الله تعالى في شاهد الزور: أشهره في السوق، ولا أعزره، وقالا رحمهما الله تعالى: نوجعه ضربا ونحبسه

Abū Ḥanīfah, may Allah have mercy on him, said regarding false testimony, "I publicise him in the market but do not give him a discretionary punishment." They,[1276] may Allah have mercy on them, said, "We beat him painfully and imprison him."

باب الرجوع عن الشهادة

AR-RUJŪ‘ ‘AN ASH-SHAHĀDAH **– RETRACTION OF TESTIMONY**

إذا رجع الشهود عن شهادتهم قبل الحكم بها سقطت شهادتهم ولا ضمان عليهم

When witnesses retract their testimony prior to a ruling [being made] upon it, their testimony lapses and there is no liability on them.

فإن حكم بشهادتهم ثم رجعوا لم يفسخ الحكم، ووجب عليهم ضمان ما أتلفوه بشهادتهم

But if judgement has been passed based on their testimony, then later they retract [their testimony], the judgement is not repealed and they are liable for whatever damage they have done with their testimony.

ولا يصح الرجوع إلا بحضرة الحاكم

Retraction is only valid in the presence of the judge (*ḥākim*).

و إذا شهد شاهدان بمال فحكم الحاكم به ثم رجعا ضمنا المال للمشهود عليه، و إن رجع أحدهما ضمن النصف

When two [male] witnesses testify with regards to property and the judge (*ḥākim*) decides on the basis of [their testimony], then later both of them retract [their testimony], they are both liable for the property to the victim.[1277] If one of the two retracts [his testimony], he is liable for a half.[1278]

و إن شهد بالمال ثلاثة فرجع أحدهم فلا ضمان عليه، و إن رجع آخر ضمن الراجعان نصف المال

If three [witnesses] testify and one of them retracts [his testimony], there

is no liability against him, but if another retracts,[1279] both of the retractors are [together] liable for a half of the property.

إن شهد رجل وامرأتان فرجعت امرأة ضمنت ربع الحق و إن رجعتا ضمنتا نصف الحق

If one man and two women testify, and one woman retracts [her testimony], she is liable for a quarter of the right, but if both the women retract [their testimonies], both of them are [jointly] liable for a half of the right.

و إن شهد رجل وعشر نسوة فرجع ثمان نسوة منهن فلا ضمان عليهن، فإن رجعت أخرى كان على النسوة ربع الحق

If one man and ten women testify, and eight of those women retract [their testimonies], there is no liability against them[1280], but if another[1281] retracts [her testimony], then the women are [liable] for a quarter of the right.[1282]

فإن رجع الرجل والنساء فعلى الرجل سدس الحق، وعلى النسوة خمسة أسداس الحق عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى : على الرجل النصف وعلى النسوة النصف

If the man and the women [all] retract [their testimonies], then on the man [there is liability for] a sixth of the right and on the women five-sixths of the right, according to Abū Ḥanīfah, may Allah have mercy on him. They,[1283] may Allah have mercy on them, said that the man is liable for a half, and the women are [jointly] liable for a half.

و إن شهد شاهدان على امرأة بالنكاح بمقدار مهر مثلها أو أكثر ثم رجعا فلا ضمان عليهما و إن شهدا بأقل من مهر المثل ثم رجعا لم يضمنا النقصان وكذلك إذا شهدا على رجل بتزوج امرأة بمقدار مهر مثلها أو أقل و إن شهدا بأكثر من مهر المثل ثم رجعا ضمنا الزيادة

If two [male] witnesses testify against a woman regarding marriage according to the amount of dowry customary for someone such as her (*mahr al-mithl*) or more, then later both of them retract [their testimony], there is no

liability against them. If they testify for less than the customary dowry, then later retract [their testimony], they are not liable for the loss,[1284] and likewise, when both of them testify against a man that he married a woman for the amount of the customary dowry or less – but if they testify for more than the customary dowry then later retract [their testimony], they are liable for the excess.

وإن شهدا ببيع شيء بمثل القيمة أو أكثر ثم رجعا لم يضمنا،
وإن كان بأقل من القيمة ضمنا النقصان

If [two male witnesses] testify to the sale of something according to the customary value[1285] or more, then later retract [their testimony], they are not liable [for anything]. If, however, it was for less than the value, they are both liable for the loss.

وإن شهدا على رجل أنه طلق امرأته قبل الدخول بها ثم رجعا
ضمنا نصف المهر وإن كان بعد الدخول لم يضمنا

If they testify against a man that he divorced his wife before consummation with her, then later they retract [their testimony], they are liable for half the dowry. If, however, [the testimony] was [that he divorced her] after consummation,[1286] they are not liable [for anything].

وإن شهدا أنه أعتق عبده ثم رجعا ضمنا قيمته

If they testify that he freed his slave, then later they retract [their testimony], they are both liable for his [the slave's] value.

وإن شهدا بقصاص ثم رجعا بعد القتل ضمنا الدية، ولا يقتص منهما

If they testify regarding retaliation (*qiṣāṣ*), then later they retract [their testimony] after the killing [of the accused], they are both liable for compensatory payment (*diyah*), but retaliatory punishment is not awarded to them.

وإذا رجع شهود الفرع ضمنوا

If secondary witnesses go back [on their testimony], they are liable.

و إن رجع شهود الأصل وقالوا «لم نشهد شهود الفرع على شهادتنا»
فلا ضمان عليهم، و إن قالوا «أشهدناهم وغلطنا» ضمنوا

If primary witnesses retract [their testimony] and say, "We did not make the secondary witnesses as witnesses to our testimony," there is no liability upon them. If they say, "We made them witnesses but we have erred," then they are liable.

و إن قال شهود الفرع «كذب شهود الأصل» أو «غلطوا في
شهادتهم» لم يلتفت إلى ذلك

If the secondary witnesses say, "The primary witnesses lie," or "…they err in their testimony," no heed is paid to that.

و إذا شهد أربعة بالزنا وشاهدان بالإحصان فرجع شهود
الإحصان لم يضمنوا

When four [males] testify regarding unlawful sexual intercourse (*zinā*) and two [male] witnesses [testify] regarding *iḥṣān*,[1287],[1288] and the witnesses to *iḥṣān* retract [their testimony], they are not liable [for anything].

و إذا رجع المزكون عن التزكية ضمنوا

When those who declare people to be worthy witnesses[1289] retract their [testimony] that [those people are] worthy (*tazkiyah*)[1290] to be witnesses, they are liable.[1291]

فإذا شهد شاهدان باليمين وشاهدان بوجود الشرط ثم رجعوا
فالضمان على شهود اليمين خاصة

When two male witnesses testify regarding an oath, and two male witnesses [testify] regarding the presence of a stipulating, then later they [all] retract [their testimony], the liability is upon the witnesses of the oath in particular.[1292]

كتاب آداب القاضي

ĀDĀB AL-QĀḌĪ – CONDUCT OF THE JUDGE

لا تصح ولاية القاضي حتى يجتمع في المولّى شرائط الشهادة ويكون من أهل الاجتهاد

The appointment of a judge is not valid unless [all] the conditions of [being] a valid witness[1293] are united in the appointed person (*muwallā*), and he is a jurist capable of reaching an independent judgement (*mujtahid*).[1294]

ولا بأس بالدخول في القضاء لمن يثق بنفسه أنه يؤدي فرضه، ويكره الدخول فيه لمن يخاف العجز عنه، ولا يأمن على نفسه الحيف فيه

There is no objection to someone undertaking the position of being a judge who is sure about himself that he will fulfil its obligations. It is, however, disapproved for someone to undertake it who fears his incapacity for it and is not secure in himself [from committing] injustice in it.[1295]

ولا ينبغي أن يطلب الولاية ولا يسألها

One should not seek appointment [as judge] nor should one ask for it.

ومن قلد في القضاء سلم إليه ديوان القاضي الذي قبله

Whoever is made a judge, the register (*dīwān*) of the judge prior to him is surrendered to him.

وينظر في حال المحبوسين، فمن اعترف منهم بحقٍ ألزمه إياه، ومن أنكر لم يقبل قول المعزول عليه إلا ببينة، فإن لم تقم البينة لم يعجل بتخليته حتى ينادي عليه ويستظهر في أمره

He investigates the condition of the prisoners. So, whoever of them acknowledges a right,[1296] [the newly-appointed judge] binds him to it,[1297]

and whoever denies, [the judge] does not accept the statement of the [judge] who was removed [from office] unless there is evidence.[1298] If evidence is not produced, he does not rush into releasing [the prisoner from prison] until he has announced [a claim of a charge] against him and sought [disclosure] in his case.

وينظر في الودائع وارتفاع الوقوف، فيعمل على حسب ما تقوم به البينة أو يعترف به من هو في يده

He investigates deposits and the incomes [generated] by endowments and he acts according to what is established by the evidence, or what the person in whose possession they are acknowledges.

ولا يقبل قول المعزول إلا أن يعترف الذي هو في يده أن المعزول سلمها إليه فيقبل قوله فيها

He does not accept the statement[1299] of the [judge] who was removed [from office] unless the one in whose possession it is acknowledges that the [judge] who was removed [from office] submitted it (i.e. the evidence) to him, and so he accepts his statement about it.

ويجلس الحاكم جلوسا ظاهرا في المسجد

The judge sits in open session[1300] in the mosque.

ولا يقبل هديةً إلا من ذي رحم محرم منه، أو ممن جرت عادته قبل القضاء بمهاداته

He does not accept gifts except from an un-marriageable relative (*dhū raḥm maḥram*), or from someone who had made it his custom to give him gifts prior to [his appointment to] judgeship.

ولا يحضر دعوة إلا أن تكون عامة، ويشهد الجنازة، ويعود المريض

He does not attend an invitation [to a meal] unless it is general.[1301] He attends funerals and visits the sick.

ولا يضيف أحد الخصمين دون خصمه

He should not show hospitality to one of two litigants without the other.

فإذا حضرا سوى بينهما في الجلوس والإقبال

When both [of the litigants] are present, he should treat them both equally in seating[1302] and attention.[1303]

و لا يسار أحدهما، ولا يشير إليه، ولا يلقنه حجة

He does not speak in confidence to either of them nor does he make gestures to him, and he does not prompt him with any argument.

فإذا ثبت الحق عنده، وطلب صاحب الحق حبس غريمه، لم يعجل بحبسه، وأمره بدفع ما عليه، فإن امتنع حبسه في كل دين لزمه بدلا عن مال حصل في يده، كثمن المبيع وبدل القرض، أو التزمه بعقد، كالمهر والكفالة

When the right has been reliably established in his view and the one in whom the right is vested (*ṣāḥib al-ḥaqq*) demands that his debtor be held in custody, [the judge] does not hasten to take him into custody. He orders him to pay what he owes.[1304] Then, if he refuses, [the judge] detains him, in [respect of] each debt which is binding on him, in lieu of property which has come into his possession such as the payment for goods loan and in lieu of a loan, or which is binding on him because of a contract, such as dowry and standing surety.[1305]

ولا يحبسه فيما سوى ذلك إذا قال: إني فقير، إلا أن يثبت غريمه أن له مالا، ويحبسه شهرين أو ثلاثة ثم يسأل عنه، فإن لم يظهر له مال خلى سبيله، ولا يحول بينه وبين غرمائه

[The judge] does not detain him for anything other than that if he says, “I am poor,”[1306] unless his creditor proves that he does have property, [in which case the judge] imprisons him for two or three months. Thereafter, he makes enquiry about him. Then, if no property of his appears,[1307] he sets him free[1308] but he does not interpose between him and his creditors.[1309]

ويحبس الرجل في نفقة زوجته

A man is imprisoned for [not paying] his wife’s maintenance.[1310]

ولا يحبس الوالد في دين ولده إلا إذا امتنع من الإنفاق عليه

A father is not imprisoned for his son's debt, unless he refuses to spend on [the son].

ويجوز قضاء المرأة في كل شيء إلا في الحدود والقصاص

The judgement of a woman is permitted in everything other than in cases of *ḥadd* punishments and retaliation (*qiṣāṣ*).

و يقبل كتاب القاضي إلى القاضي في الحقوق إذا شهد به عنده، فإن شهدوا على خصم حاضر حكم بالشهادة، وكتب بحكمه، و إن شهدوا بغير حضرة خصمه لم يحكم، وكتب بالشهادة ليحكم بها المكتوب إليه

The document of one judge to [another] judge is accepted concerning rights, if [a litigant] testifies to him in his presence.[1311] So, if they testify against a present litigant,[1312] [the judge] decides according to the testimony and writes his decision.[1313] If they testify without the presence of the litigant, [the judge] does not pass judgement and he writes [the details] regarding the testimony so that the [judge] addressed (*maktūb ilayhi*) may pass judgement.[1314]

ولا يقبل الكتاب إلا بشهادة رجلين، أو رجل وامرأتين، ويجب أن يقرأ الكتاب عليهم ليعرفوا ما فيه، ثم يختمه و يسلمه إليهم

The document is only accepted with the testimony of two male witnesses, or one male and two female witnesses. It is incumbent that he reads the document to them so that they may know what it contains. Then he seals[1315] it and hands it over to them.

و إذا وصل إلى القاضي لم يقبله إلا بحضرة الخصم، فإذا سلمه الشهود إليه نظر إلى ختمه، فإذا شهدوا أنه كتاب فلان القاضي سلمه إلينا في مجلس حكمه وقرأه علينا وختمه، فتحه القاضي وقرأه على الخصم، وألزمه ما فيه

When [the written testimony] reaches the [other] judge, he does not accept

it without the presence of the litigant.[1316] When the witnesses hand it over to him, he looks at its seal. When they testify that, “It is the document of so-and-so the judge. He handed it to us in the session of his verdict and [in] his jurisdiction, and he read it to us and sealed it.” The judge opens it and reads it to the litigant and binds him to whatever[1317] it contains.

ولا يقبل كتاب القاضي إلى القاضي في الحدود والقصاص

The document of one judge to [another] judge in [respect of] *ḥadd* punishments and retaliation (*qiṣāṣ*) is not accepted.

وليس للقاضي أن يستخلف على القضاء إلا أن يفوض إليه ذلك

The judge may not deputise [anyone] to pass judgement unless that [authority] has been delegated to him.

و إذا رفع إلى القاضي حكم حاكم أمضاه إلا أن يخالف الكتاب، أو السنة، أو الإجماع، أو يكون قولا لا دليل عليه

When the order of a judge (*ḥākim*) is raised to [another] judge (*qāḍī*), he endorses it, unless it opposes the Book [of Allah], the Sunnah, the consensus [of jurists] (*ijmā‘*) or it is a statement for which there is no evidence.[1318]

ولا يقضي القاضي على غائب إلا أن يحضر من يقوم مقامه

The judge does not decide against an absentee unless his representative is present.[1319]

و إذا حكم رجلان رجلا بينهما ورضيا بحكمه جاز إذا كان بصفة الحاكم

When two men appoint someone as an arbitrator (*ḥākim*) between themselves, and they agree to his judgement, it is permitted if he has the qualifications[1320] of an arbitrator.

ولا يجوز تحكيم الكافر، والعبد، والذمي، والمحدود في القذف، والفاسق، والصبي

The appointment as arbitrator of a non-Muslim, a slave, a non-Muslim

living under Muslim governance (*dhimmī*), someone convicted of unsubstantiated accusations of illegal sexual intercourse (*qadhf*), a transgressor (*fāsiq*) and a minor are not permitted.

ولكل واحد من المحكمين أن يرجع ما لم يحكم عليهما

As long as he has not adjudicated between the two, each of those who appointed another as a *ḥākim* (*muḥakkims*) [between them] may rescind [the authority].

وإذا حكم عليهما لزمهما

When [the arbitrator] adjudicates, it is binding on both of them.[1321]

وإذا رفع حكمه إلى القاضي فوافق مذهبه أمضاه، وإن خالفه أبطله

If he refers his verdict to the judge and it conforms to his *madhhab*, he endorses it, but if it contradicts it, [the judge] nullifies it.

ولا يجوز التحكيم في الحدود والقصاص

The appointment of an arbitrator is not allowed in cases involving *ḥadd* punishments and retaliation (*qiṣāṣ*).

وإن حكماه في دم الخطأ فقضى الحاكم على العاقلة بالدية لم ينفذ حكمه

If they appointed [someone] as arbitrator in accidental homicide (*dam al-khaṭa'*), and the arbitrator issues a verdict that the group responsible for his compensatory payments (*'āqilah*) must pay a compensatory payment, his judgement is not executed.[1322]

ويجوز أن يسمع البينة ويقضي بالنكول

It is permitted for him to hear testimony and decide refusal to take oaths (*nukūl*).

وحكم الحاكم لأبويه وولده وزوجته باطل

The decision of the arbitrator in favour of his parents, his child and his wife is void.

كتاب القسمة

QISMAH – DIVISION[1323]

ينبغي للإمام أن ينصب قاسما يرزقه من بيت المال ليقسم بين
الناس بغير أجرةٍ ، فإن لم يفعل نصب قاسما يقسم بالأجرة

The leader (Imam) should appoint a distributor (*qāsim*), whom he provides for from the *bayt al-māl*,[1324] [in order] to distribute [shares] between the people without a fee [from them]. If [the Imam] does not do that, [then] he should appoint a distributor to distribute for a fee.[1325]

ويجب أن يكون عدلا، مأمونا، عالما بالقسمة

It is obligatory that he be just (*'adl*), trustworthy and one who knows the [rules and methods] of distribution.

ولا يجبر القاضي الناس على قاسم واحد

The judge does not compel people to [only] one distributor.[1326]

ولا يترك القسام يشتركون

He does not leave the distributors sharing.[1327]

وأجرة القسام على عدد رؤوسهم عند أبي حنيفة رحمه الله تعالى،
وقالا رحمهما الله تعالى: على قدر الأنصباء

The fees of the distributors are [paid according] to the number of the heads of [the heirs], according to Abū Ḥanīfah, may Allah have mercy on him.[1328] They,[1329] may Allah have mercy on them, however, said, "… according to the proportion of the shares."[1330]

و إذا حضر الشركاء عند القاضي وفي أيديهم دار أو ضيعة ادّعوا أنهم ورثوها عن فلان لم يقسمها القاضي عند أبي حنيفة رحمه الله تعالى حتى يقيموا البينة على موته وعدد ورثته، وقالا رحمهما الله تعالى: يقسمها باعترافهم، و يذكر في كتاب القسمة أنه قسمها بقولهم

When those who share come to the judge and in their possession there is a building or an estate,[1331] and they [all] claim that they have inherited it from so-and-so, the judge shall not have it partitioned unless they establish evidence of the death of [said person] and [of] the number of his heirs, according to Abū Ḥanīfah, may Allah have mercy on him.[1332] They,[1333] may Allah have mercy on them said [that the judge] apportions it according to their verification,[1334] and he mentions in the document of division that he had it divided according to their word.

و إن كان المال المشترك مما سوى العقار وادعوا أنه ميراث قسمه في قولهم جميعا

If the property is shared (*mushtarak*), of that which is other than real estate (i.e. is moveable), and they claim that it is inheritance, [the judge] apportions it according to the saying of all of them.

و إن ادعوا في العقار أنهم اشتروه قسمه بينهم

Regarding real estate, if they claim that they have bought it, then [the judge] has it divided among them.

و إن ادعوا الملك ولم يذكروا كيف انتقل إليهم قسمه بينهم

If they claim ownership but they do not mention how it was transferred to them, [the judge] [still] has it divided between them.

و إذا كان كل واحد من الشركاء ينتفع بنصيبه قسم بطلب أحدهم

If each one of those who share derives benefit from his [own] share, [the judge] has [the property] divided upon the demand of [any] one of them.[1335]

و إن كان أحدهم ينتفع والآخر يستضر لقلة نصيبه، فإن طلب صاحب الكثير قسم، و إن طلب صاحب القليل لم يقسم

If [only] one of them derives benefit [from the property] and the other suffers loss due to the smallness of his share, then [in this case,] if the owner of the large [share] demands it, it is not to be divided, but if the owner of the small [share] demands it, it is not to be divided.

وإن كان كل واحد منهما يستضر لم يقسمها إلا بتراضيهما

If each of the two [who share] suffers harm, [the judge] does not have it divided without the mutual consent of both of them.

ويقسم العروض إذا كانت من صنف واحد، ولا يقسم الجنسان بعضهما في بعض إلا بتراضيهما

[The judge] has goods divided when they are of the same kind,[1336] but he does not have two genera divided, one against the other, except with the mutual consent of both of them.

وقال أبو حنيفة رحمه الله تعالى: لا يقسم الرقيق ولا الجواهر
وقال أبو يوسف ومحمد رحمهما الله تعالى: يقسم الرقيق

Abū Ḥanīfah, may Allah have mercy on him, said that he does not have slaves and gems distributed,[1337] but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he has slaves distributed.

ولا يقسم حمام ولا بئر ولا رحىً إلا أن يتراضى الشركاء

He does not have public baths, wells or querns divided up, except when those who share them mutually consent [to that].

وإذا حضر وارثان عند القاضي وأقاما البينة على الوفاة وعدد الورثة والدار في أيديهم ومعهم وارث غائب قسمها القاضي بطلب الحاضرين، ونصب للغائب وكيلا يقبض نصيبه، وإن كانوا مشترين لم يقسم مع غيبة أحدهم

When two heirs come to the judge and both of them produce evidence of the death [of the owner] and [of] the number of heirs, and [that the] building is in their possession, and along with them [in the heirs] there is an heir [who is] absent, the judge divides it up on the demand of those present and

appoints an agent for the absentee who receives his share [for him]. But if they are purchasers, he does not have [it] divided up in the absence of any of them.

وإن كان العقار في يد الوارث الغائب أو شيء منه لم يقسم، وإن حضر وارث واحد لم يقسم

If the real estate, or some [part] of it,[1338] is in the possession of an absentee heir, [the judge] does not divide it up. If [only] one heir attends, he does not have it divided up.

وإذا كانت دور مشتركة في مصر واحد قسمت كل دار على حدتها في قول أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: إن كان الأصلح لهم قسمة بعضها في بعض قسمها

When there are some collectively owned buildings in one city, each building is partitioned individually, according to the verdict of Abū Ḥanīfah, may Allah have mercy on him.[1339] They,[1340] may Allah have mercy on them, however, said that if the division of some of the [buildings] for others is more beneficial for [the collective owners], [the judge] divides them [like that].[1341]

وإن كانت دار وضيعة، أو دار وحانوت، قسم كل واحد على حدته

If [the collectively owned property consists of] a building and an estate, or a building and a shop, he divides each one individually.

وينبغي للقاسم أن يصور ما يقسمه، ويعدله، ويذرعه، ويقوم البناء، ويفرد كل نصيب عن الباقي بطريقه وشربه حتى لا يكون لنصيب بعضهم بنصيب الآخر تعلق و يكتب أساميهم ويجعلها قرعة، ثم يلقب نصيبا بالأول، والذي يليه بالثاني والذى يليه بالثالث، وعلى هذا، ثم يخرج القرعة فمن خرج اسمه أولا فله السهم الأول، ومن خرج ثانيا فله السهم الثاني

The distributor makes a diagram of whatever he is to divide and he does it fairly.[1342] He measures it[1343] and he values the building. He separates each share from the rest with its passage and its drain [included] so that there does

not remain any connection for the share of one of them with the share of the other.[1344] He writes [down] the names of [the co-owners] and he casts them in lots. He then nominates one share as the first, [that] which is next to it as the second, [that] which is next to it as the third, and so on. Then he draws the lots. Whoever's name emerges first has the first share, whoever emerges second has the second share [and so on].

ولا يدخل في القسمة الدراهم والدنانير إلا بتراضيهم

Dinars and dirhams are not included in the division[1345] except with their [the heirs'] mutual consent.[1346]

فإن قسم بينهم ولأحدهم مسيل في ملك لآخر، أو طريق لم يشترط في القسمة: فإن أمكن صرف الطريق والمسيل عنه فليس له أن يستطرق و يسيل في نصيب الآخر، و إن لم يمكن فسخت القسمة

If [the real estate] has been divided between them and one of them has a rivulet[1347] on the property of another, or a pathway which was not a stipulation in the division,[1348] if the diversion of the pathway and the rivulet [away] from [the property of the other person] is possible, then he may not take a pathway or rivulet in the share of the other, but if that is not possible, the division is rescinded.

و إذا كان سفل لا علو له، أوعلو لا سفل له، أوسفل له علو، قوم كل واحد على حدته، وقسم بالقيمة، ولا يعتبر بغير ذلك

If there is a lower storey [but] no upper storey to it,[1349] an upper storey [but] no lower storey to it[1350] or a lower storey [which does have] an upper storey to it,[1351] each one is valued individually and divided according to its value and it is not taken into account without that.

و إذا اختلف المتقاسمون فشهد القاسمان، قبلت شهادتهما

When applicants for division differ,[1352] and two distributors testify,[1353] their [the two distributors'] testimony is accepted.

و إن ادعى أحدهم الغلط، وزعم أنه أصابه شيء في يد صاحبه، وقد أشهد على نفسه بالاستيفاء، لم يصدق على ذلك إلا ببينة

If one of [the applicants for the division] claims an error and thinks that something has entered the possession of his partner [in the division] and he [himself] had testified against himself of the full execution [of the division],[1354] he is not confirmed in that [claim] without evidence.

وإن قال «استوفيت حقي» ثم «أخذت بعضه» فالقول قول خصمه مع يمينه

If he says, “I have received my right,” and then later [says,] “I took [only] a portion of it,” the [legally valid] statement is the word of his adversary[1355] along with his oath.

وإن قال «أصابني إلى موضع كذا فلم يسلمه إليّ» ولم يشهد على نفسه بالاستيفاء، وكذبه شريكه تحالفا، وفسخت القسمة

If he says, “[The portion] up to such a place [legally] fell to me but was not surrendered to me,” and he had not testified against himself regarding the execution, and his co-owner belies him, they both swear oaths, and the division is rescinded.

وإن استحق بعض نصيب أحدهما بعينه لم تفسخ القسمة عند أبي حنيفة رحمه الله تعالى ورجع بحصة ذلك من نصيب شريكه، وقال أبو يوسف رحمه الله تعالى: تفسخ القسمة

If someone is entitled to a share of one of the two, the division is not rescinded, according to Abū Ḥanīfah, may Allah have mercy on him, and he resorts to that [amount of] portion from the share of his co-owner. Abū Yūsuf, may Allah have mercy on him, said, “The division is rescinded.”

كتاب الإكراه

IKRĀH – COERCION

الإكراه يثبت حكمه إذا حصل ممن يقدر على إيقاع ما يوعد به، سلطانا كان أو لصا

Coercion – its [legal] ruling is established[1356] when it comes about from someone who has the capacity of enforcing whatever he threatened, [be he] a king or a thief.[1357]

و إذا أكره الرجل على بيع ماله، أو على شراء سلعة، أو على أن يقر لرجل بألف درهم، أو يؤاجر داره – وأكره على ذلك بالقتل أو بالضرب الشديد، أو بالحبس –فباع أو اشترى، فهو بالخيار: إن شاء أمضى البيع، و إن شاء فسخه ، ورجع بالمبيع

When a man is coerced into selling his property, or buying goods, or confirming a thousand dirhams for [another] man or to lease out his [own] house, and he was coerced to do that with [the threat of] murder, severe beating, or with imprisonment,[1358]

[and] so he sells[1359] or buys,[1360] then he has the choice:

1. If he wants, he may confirm the sale, or
2. If he wants, he may annul it and return the sold item.[1361]

فإن كان قبض الثمن طوعا فقد أجاز البيع، و إن كان قبضه مكرها فليس بإجازة، وعليه رده إن كان قائما في يده، و إن هلك المبيع في يد المشتري وهو غير مكره ضمن قيمته وللمكره أن يضمن المكره إن شاء

If he had taken the payment[1362] willingly, then he has endorsed the sale, but if he had taken the payment reluctantly, it is not an endorsement,[1363] and he must return it if it is still in his possession. If the sold goods have perished

in the possession of the buyer, and he was not compelled, [then] he pays in compensation its value, and the coerced person (*mukrah*) may receive compensation from the one who applied coercion (*mukrih*), if he wants.[1364]

ومن أكره على أن يأكل الميتة أو يشرب الخمر - فأكره على ذلك
بحبس، أو بضرب، أو قيد - لم يحل له، إلا أن يكره بما يخاف منه
على نفسه، أو على عضو من أعضائه، فإذا خاف ذلك وسعه أن
يقدم على ما أكره عليه، ولا يسعه أن يصبر على ما توعد به، فإن
صبر حتى أوقعوا به ولم يأكل فهو آثم

Whoever is compelled to eat carrion, or drink wine, and he is coerced into that with [the threat of] detainment, beating or fettering, it is not lawful for him, unless he is coerced with something from which he fears for his life, or with [harm to] one of his limbs. Thus, when he fears that, it is permitted for him to proceed with whatever he has been coerced to do. It is not permitted for him to patiently endure that which he has been threatened with. If he endures it until they carry it out and he has not eaten [the carrion or drank the wine], then he is guilty [of wrongdoing].

و إذا أكره على الكفر بالله تعالى، أو بسب النبي صلى الله عليه
وسلم: بقيد، أو حبس، أو ضرب، لم يكن ذلك إكراهاً حتى يكره
بأمر يخاف منه على نفسه، أو على عضو من أعضائه، فإذا خاف
على ذلك وسعه أن يظهر ما أمروه به، و يوري، فإذا أظهر ذلك
وقلبه مطمئن بالإيمان فلا إثم عليه، و إن صبر حتى قتل ولم يظهر
الكفر كان مأجورا

If someone is coerced into rejecting Allah, exalted is He, or abusing the Prophet ﷺ by [the threat of] fettering, detainment, or beating, then that is not coercion until he is coerced with a matter from which he fears for his life or [harm to] one of his limbs. Thus, when he fears that, it is permitted for him to express whatever they command him with but to dissimulate. So, when he says that and his heart is at rest in faith, there is no guilt [of wrongdoing] upon him, but if he endures it until he is killed and does not express disbelief, he will be rewarded.

و إن أكره على إتلاف مال مسلم بأمر يخاف منه على نفسه، أو على عضو من أعضائه وسعه أن يفعل ذلك، ولصاحب المال أن يضمّن المكره

If he is coerced into wrecking the property of a Muslim because of a matter from which he fears for his life or [harm to] one of his limbs, it is permitted for him to perform that [act or omission]. The owner of the [wrecked] property receives compensation from the person who coerced [him].

و إن أكره بقتل على قتل غيره لم يسعه أن يقدم عليه، و يصبر حتى يقتل، فإن قتله كان آثما، والقصاص على الذي أكرهه إن كان القتل عمدا

If he is coerced by [the threat of] being killed to murder someone else, it is not permitted for him to proceed with that. He should patiently endure [the pressure of the threat] until he [himself] is killed. If [the coerced individual] kills [the victim], he is guilty of wrongdoing, and retaliation (*qiṣāṣ*) is due against the one who coerced him, if the killing was deliberate.

و إن أكرهه على طلاق امرأته، أو عتق عبده ففعل، وقع ما أكره عليه، و يرجع على الذي أكرهه بقيمة العبد، و يرجع بنصف مهر المرأة إن كان الطلاق قبل الدخول

If he is coerced into divorcing his wife or setting his slave free and he does [that], whatever he was coerced into takes effect. [The person who was coerced] resorts to whoever coerced him into [doing that] for the value of the slave, and he resorts [to him] for a half of the wife's dowry if [the coerced] divorce was [made] prior to consummation [of the marriage].

و إن أكره على الزنا وجب عليه الحد عند أبي حنيفة رحمه الله تعالى، إلا أن يكرهه السلطان، وقالا رحمهما الله تعالى: لا يلزمه الحد

If he is forced into [committing] unlawful sexual intercourse (*zinā*), the *ḥadd* punishment is obligatory upon him, according to Abū Ḥanīfah, may Allah have mercy on him, unless the Sulṭān compels him. They,[1365] may Allah have mercy on them, however, said [that] the *ḥadd* [punishment] is not

binding on him.

و إذا أكره على الردة لم تبن امرأته منه

When someone is coerced into apostasy (*riddah*), his wife is not finally divorced from him.[1366]

كتاب السير

SIYAR[1367] – CAMPAIGNS

الجهاد فرض على الكفاية، إذا قام به فريق من الناس سقط عن
الباقين، وإن لم يقم به أحد أثم جميع الناس بتركه

Jihād is a collective obligation; when a group of the people establish it, [the obligation] lapses from the rest, but if none of them establish it, [then] all of the people are guilty of wrongdoing by its omission.[1368]

وقتال الكفار واجب وإن لم يبدؤونا

Fighting unbelievers is obligatory, even it they do not initiate it against us.[1369]

ولا يجب الجهاد على صبي، ولا عبد، ولا امرأة، ولا أعمى، ولا
مقعد، ولا أقطع

Jihād is not obligatory for minors, slaves, women, the blind, the disabled or amputees.

فإن هجم العدو على بلد وجب على جميع المسلمين الدفع: تخرج
المرأة بغير إذن زوجها، والعبد بغير إذن المولى

When the enemy attacks a city, repulsing [the attack] is obligatory on all the Muslims: [in such circumstances] women go out [to fight] without the permission of their husbands, and slaves without the permission of [their] masters.

وإذا دخل المسلمون دار الحرب فحاصروا مدينة أو حصنا
دعوهم إلى الإسلام، فإن أجابوهم كفوا عن قتالهم، وإن امتنعوا
دعوهم إلى أداء الجزية

When Muslims enter territory at war [with the Muslims] (*dār al-ḥarb*) and they lay siege to a city or to a fort, they invite [the inhabitants] to Islam. If [the inhabitants] accept them, [then] [the Muslims] desist from fighting them, but if they decline, [the Muslims] call them to pay *jizyah*.

فإن بذلوها فلهم ما للمسلمين وعليهم ما عليهم

If they give it (*jizyah*), then they have [as a legal right] whatever the Muslims have, and [the legal duties] due on them are whatever are due on [the Muslims].[1370]

ولا يجوز أن يقاتل من لم تبلغه دعوة الإسلام، إلا بعد أن يدعوهم

It is not permitted to fight those whom the invitation of Islam has not reached, except after [the Muslims] have invited them [to Islam].

ويستحب أن يدعو من بلغته الدعوة إلى الإسلام، ولا يجب ذلك

It is recommended to invite those whom the invitation of Islam has [already] reached [before fighting them], but that is not obligatory.

فإن أبوا استعانوا بالله تعالى عليهم وحاربوهم ونصبوا عليهم المجانيق، وحرقوهم، وأرسلوا عليهم الماء، وقطعوا أشجارهم وأفسدوا زروعهم

If they refuse,[1371] [the Muslims] should seek the aid of Allah, exalted is He, against them and wage war on them. They should fire catapults[1372] at them and burn [their buildings and strategic positions]. They should unleash water against them[1373] and cut down their trees and destroy their crops.

ولا بأس برميهم وإن كان فيهم مسلم أسير أو تاجر

There is no objection in shooting them [with arrows], even though there may be Muslim prisoners or traders amongst them.

وإن تترسوا بصبيان المسلمين أو بالأسارى لم يكفوا عن رميهم ويقصدون بالرمي الكفار دون المسلمين

If they shield themselves with children of the Muslims, or with prisoners, [the Muslims] should not cease shooting at them [with arrows]. With the shooting [of arrows, etc.] they target non-Muslims, but not the Muslims.

ولا بأس بإخراج النساء والمصاحف مع المسلمين إذا كان عسكرا عظيما يؤمن عليه، ويكره إخراج ذلك في سرية لا يؤمن عليها

There is no objection in taking women and copies of the Qur'ān (*muṣḥafs*) with the Muslims when the army is great and there is confidence in it. It is disapproved to take them in a detachment (*sariyyah*) when there is no confidence in it.

ولا تقاتل المرأة إلا بإذن زوجها، ولا العبد إلا بإذن سيده، إلا أن يهجم العدو

Women do not fight except with the permission of their husbands nor slaves except with the permission of their masters, unless the enemy attacks.[1374]

وينبغي للمسلمين أن لا يغدروا، ولا يغلوا، ولا يمثلوا ولا يقتلوا امرأة ولا صبيا ولا شيخا فانيا ولا أعمى ولا مقعدا إلا أن يكون هؤلاء ممن له رأى في الحرب، أو تكون المرأة ملكة ولا يقتلوا مجنونا

The Muslims are required not to:

1. Be treacherous,
2. Act unfaithfully in taking from the spoils,[1375]
3. Mutilate, or
4. Kill
    a. A woman,
    b. A minor,
    c. An enfeebled old man,
    d. The blind, or
    e. The disabled,

unless any one of these [persons] are people who have an insight into war,[1376] or the woman is a queen.

f. The insane are not to be killed [either].

On Truce

و إن رأى الإمام أن يصالح أهل الحرب أو فريقا منهم وكان في
ذلك مصلحة للمسلمين فلا بأس به

If the leader (Imam) thinks that he should make a truce with the [enemy] combatants, or [with] a group of them, and in that there is some benefit for the Muslims, there is no objection to that.

فإن صالحهم مدة ثم رأى أن نقض الصلح أنفع نبذ إليهم وقاتلهم

If he secures a truce with them for a period, then later thinks that breaking the truce is more beneficial, he is to [formally] renounce [the truce] to [the enemy][1377] and fight them.

فإن بدؤوا بخيانة قاتلهم ولم ينبذ إليهم إذا كان ذلك باتفاقهم

If [the enemy] initiates [the breach of the truce] by treachery, [the Imam] should fight them and not [formally] renounce [the truce] to them,[1378] if that [breach] was by their arrangement.

و إذا خرج عبيدهم إلى عسكر المسلمين فهم أحرار

If their slaves leave towards the army of the Muslims, they are free.

ولا بأس بأن يعلف العسكر في دار الحرب، ويأكلوا ما وجدوه
من الطعام، ويستعملوا الحطب، ويدهّنوا بالدهن، ويقاتلوا بما
يجدونه من السلاح، كل ذلك بغير قسمة

There is no objection to the [Muslim] army:

1. Foddering [its animals] in enemy territory (*dār al-ḥarb*),
2. Eating whatever they find of food,
3. Making use of firewood,
4. Embrocating with oil, and
5. Fighting with [the use of] whatever of weapons they find – all of that without distribution [by the Imam].

ولا يجوز أن يبيعوا من ذلك شيئا ولا يتمولوه

It is not permitted for them to sell any of that nor to hoard it.

ومن أسلم منهم أحرز بإسلامه نفسه وأولاده الصغار وكل مال
هو في يده أو وديعة في يد مسلم أو ذمي

Whoever of them becomes Muslim, due to his [acceptance of] Islam he thus protects his [own] life, his minor children, all of his wealth [that is] in his possession or entrusted for safekeeping to a Muslim or to a non-Muslim living under Muslim governance (*dhimmī*).[1379]

فإن ظهرنا على الدار فعقاره فيء وزوجته فيء وحملها فيء، وأولاده
الكبار فيء

If we [the Muslims] overcome his house, then his real estate property is *fay'*-booty,[1380] his wife, his mount and his major children are [all] *fay'*-booty.

ولا ينبغي أن يباع السلاح من أهل الحرب، ولا يجهز إليهم، ولا
يفادى بالأسارى عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله
تعالى : يفادى بهم أسارى المسلمين

Weapons ought not to be sold to the [enemy] fighters, nor may they be equipped with those [weapons] nor may prisoners be ransomed,[1381] according to Abū Ḥanīfah, may Allah have mercy on him. They,[1382] may Allah have mercy on them, however, said that Muslims' prisoners are ransomed with them [Muslims imprisoned by the enemy].

ولا يجوز المن عليهم

It is not permitted to [show] favours to them.

وإذا فتح الإمام بلدا عنوة فهو بالخيار: إن شاء قسمها بين
الغانمين، وإن شاء أقر أهلها عليها ووضع عليهم الجزية و على
أراضيهم الخراج

When the leader (Imam) conquers a city by force, then he has the choice:

1. If he wants, he divides it between the victorious fighters (*ghānims*), or

2. If he wants, he confirms[1383] its inhabitants on it and applies *jizyah* to them and *kharāj* (land tax) to their lands.

وهو في الأسارى بالخيار: إن شاء قتلهم، و إن شاء استرقهم، و إن شاء تركهم أحرارا ذمة للمسلمين

With regards to the prisoners, he has the choice:

1. If he wants, he kills them,
2. If he wants, he enslaves them, or
3. If he wants, he leaves them as free men under the contract of the *dhimmah* to the Muslims.

ولا يجوز أن يردهم إلى دار الحرب

It is not permitted for him to return [the prisoners] to the territory at war (dār al-ḥarb).

و إذا أراد الإمام العود إلى دار الإسلام ومعه مواش فلم يقدر على نقلها إلى دار الإسلام ذبحها وحرقها ولا يعقرها ولا يتركها

When the leader (Imam) decides to return to the Muslim lands (*dār al-Islām*) and with him there are cattle[1384] and he is not able to transport them to the Muslim lands, he slaughters them and burns [their carcasses], and he does not hamstring them or leave them [roaming free].

ولا يقسم غنيمة في دار الحرب حتى يخرجها إلى دار الإسلام

He does not distribute the booty in enemy territory until he takes it to the Muslim lands.

والردء والمقاتل في العسكر سواء

The auxiliary and the fighter in the army are [deemed] the same.[1385]

و إذا لحقهم المدد في دار الحرب قبل أن يخرجوا الغنيمة إلى دار الإسلام شاركوهم فيها

When reinforcements reach [the Muslims] in enemy territory (*dār al-ḥarb*) before they take the booty to Muslim lands, [the reinforcements] share

with them in it.[1386]

لا حق لأهل سوق العسكر في الغنيمة إلا أن يقاتلوا

People of the army's market[1387] have no right to booty unless they fight.

وإذا آمن رجل حر أو امرأة حرة كافرا أو جماعة أو أهل حصن أو مدينة صح أمانهم، ولم يجز لأحد من المسلمين قتلهم إلا أن يكون في ذلك مفسدة فينبذ إليهم الإمام

When a free man or free woman grant safety to a non-Muslim, or a group or the inhabitants of a fortress or a city, their promise of safety is valid. It is not permitted for any of the Muslims to kill them unless there is a corrupting [element] in that, [in which case], the leader (Imam) formally renounces [the promise of safety] to them.

ولا يجوز أمان ذمي، ولا أسير، ولا تاجر يدخل عليهم

It is not valid for a non-Muslim living under Muslim governance (*dhimmī*), a prisoner-of-war or a [Muslim] trader who visits [the enemy] to grant safety.

ولا يجوز أمان العبد المحجور عليه عند أبي حنيفة رحمه الله تعالى إلا أن يأذن له مولاه في القتال، وقال أبو يوسف ومحمد رحمهما الله تعالى: يصح أمانه

It is not valid for a legally incompetent slave to grant safety, according to Abū Ḥanīfah, may Allah have mercy on him, unless his master permits him [to take part] in the fighting. Abū Yūsuf and Muḥammad, may Allah have mercy on them, however, said that his [granting of] safety is valid.[1388]

وإذا غلب الترك على الرُوم فسبوهم وأخذوا أموالهم ملكوها، وإن غلبنا على الترك حل لنا ما نجده من ذلك، وإذا غلبوا على أموالنا وأحرزوها بدارهم ملكوها

When the Turks overcome the Romans,[1389] imprison them and take their property, they take ownership of it. And if [the Muslims] overcome the

Turks, whatever we find from that is lawful to us. When they overcome our property and they take it [back] to their homes, they acquire ownership of it.

فإن ظهر عليها المسلمون فوجدوها قبل القسمة فهي لهم بغير شيء، و إن وجدوها بعد القسمة أخذوها بالقيمة إن أحبوا

If the Muslims then conquer that[1390] and [its owners] find it prior to [its] distribution [among the Muslim fighters], it is for them for nothing [as payment].[1391] But if they find it after distribution, they take it [back] with payment,[1392] if they wish [to take it back].

و إن دخل دار الحرب تاجر فاشترى ذلك فأخرجه إلى دار الإسلام فمالكه الأول بالخيار: إن شاء أخذه بالثمن الذي اشتراه به التاجر، و إن شاء تركه

If a trader enters enemy territory (*dār al-ḥarb*) and buys that [property], then takes it to Muslim lands, its initial owner has the choice:

1. If he wants, he may take it (i.e. buy it) for the price which the trader bought it for, or
2. If he wants, he may leave it.

ولا يملك علينا أهل الحرب بالغلبة مدبرينا وأمهات أولادنا ومكاتبينا وأحرارنا، و نملك عليهم جميع ذلك

By conquest, enemy combatants do not become owners against us[1393] of our slaves who are to be set free on the death of their owners (*mudabbars*), our slave-women who are mothers of our children (*umm al-walads*), our slaves who have a contract to purchase their freedom (*mukātabs*) or of our free men, but we may become owners against them of all of that.

و إذا أبق عبد المسلم فدخل إليهم فأخذوه لم يملكوه عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى ملكوه

When the slave of a Muslim absconds and goes in among them and they take him, they do not acquire ownership of him, according to Abū Ḥanīfah, may Allah have mercy on him. They,[1394] may Allah have mercy on them, however, said that they acquire ownership of him.

و إن ند إليهم بعير فأخذوه ملكوه

If a camel escapes to them and they take it, they acquire ownership of it.

Ghanā'im – Spoils

و إذا لم يكن للإمام حمولة يحمل عليها الغنائم قسمها بين الغانمين قسمة إيداع ليحملوها إلى دار الإسلام ثم يرجعها منهم فيقسمها

If the leader (Imam) has no beasts of burden on which to transport the spoils, he distributes it among the conquering fighters as a deposit on trust, for them to transport to the Muslim lands. Then, he takes it back from them and distributes it.

ولا يجوز بيع الغنائم قبل القسمة في دار الحرب

The sale of spoils in enemy territory prior to distribution is not permitted.

ومن مات من الغانمين في دار الحرب فلا حق له في الغنيمة

Whoever of the conquering fighters dies in enemy territory,[1395] has no right in the [distribution of the] spoils.[1396]

ومن مات من الغانمين بعد إخراجها إلى دار الإسلام فنصيبه لورثته

Whoever of the conquering fighters dies after their [spoils] being brought to the Muslim lands, then his share is for his heirs.

ولا بأس أن ينفل الإمام في حال القتال، ويحرض بالنفل على القتال فيقول: من قتل قتيلا فله سلبه، أو يقول لسرية: قد جعلت لكم الربع بعد الخمس

There is no objection if the leader promises more during the fighting and [thereby] urges on the fighting with the promise of more, and he says, "Whoever kills someone, then he has his spoils (*salab*[1397])," or he says to a raiding party, "I promise you a quarter after the [exclusion of the] fifth (*khums*[1398])."

ولا ينفل بعد إحراز الغنيمة إلا من الخمس

After the collection of the booty, he does not reward [anyone], except from the fifth (*khums*).

و إذا لم يجعل السلب للقاتل فهو من جملة الغنيمة، والقاتل وغيره فيه سواء

When [the Imam] does not promise the spoils (*salab*) to the person who killed [the slain enemy], then it is [made] a part of the total booty,[1399] and the person who killed him and others are equal with respect to it.

والسلب: ما على المقتول من ثيابه وسلاحه ومركبه

The spoils (*salab*) are whatever clothes and armour the slain [enemy fighter] has on as well as his mount.

و إذا خرج المسلمون من دار الحرب لم يجز أن يعلفوا من الغنيمة ولا يأكلوا منها شيئا

When the Muslims leave enemy territory, it is not permitted for them to feed [their animals] from the booty nor for them to eat anything from it.

ومن فضل معه علف أو طعام رده إلى الغنيمة

Whoever has some fodder or food left over should return it to the booty.

و يقسم الإمام الغنيمة، فيخرج خمسا، و يقسم الأربعة الأخماس بين الغانمين: للفارس سهمان، وللراجل سهم عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: للفارس ثلاثة أسهم

[Only] the leader distributes the booty. He takes out a fifth (*khums*) and distributes the [remaining] four-fifths among the conquering fighters: two shares [each] for cavalry and one share [each] for infantry, according to Abū Ḥanīfah, may Allah have mercy on him. They,[1400] may Allah have mercy on them, however, said, “For [each of] the cavalry there are three shares.”

ولا سهم إلا لفرس واحد، والبراذين والعتاق سواء، ولا يسهم لراحلة ولا بغل

There is only a share for one horse. Common horses and pedigree horses are the same.[1401] He does not appoint shares for riding camels or mules.

ومن دخل دار الحرب فارسا فنفق فرسه استحق سهم فارس

Whoever enters enemy territory as cavalry and his horse perishes is entitled to a share as cavalry.

ومن دخل راجلا فاشترى فرسا استحق سهم لراجل

Whoever enters as infantry and then buys a horse is entitled to a share as infantry.

ولا يسهم لمملوك ولا امرأة ولا ذمي ولا صبي، ولكن يرضخ لهم على حسب ما يرى الإمام

There are no shares for slaves, women, non-Muslims living under Muslim governance (*dhimmīs*) or minors, but the leader may give them as a gift, as he sees fit.

وأما الخمس فيقسم على ثلاثة أسهم:

With regards to the fifth (*khums*), it is divided into three shares:

سهم لليتامى، وسهم للمساكين، وسهم لأبناء السبيل

1. A share for orphans,
2. A share for the needy, and
3. A share for travellers.

ويدخل فقراء ذوي القربى فيهم، ويقدمون، ولا يدفع إلى أغنيائهم شيء

Poor close relatives (*dhawū'l-qurbā*)[1402] are comprised among them and they are given priority, but the wealthy of them are not given anything.

فأما ذكر الله تعالى لنفسه في كتابه من الخمس فإنما هو لافتتاح الكلام تبركا باسمه

Whatever Allah, exalted is He, has mentioned of the fifth (*khums*) for Himself in His Book, it is [there] to open the speech, deriving blessing from His name.[1403]

وسهم النبي صلى الله عليه وسلم سقط بموته كما سقط الصفي،
وسهم ذوي القربى كانوا يستحقونه في زمن النبي صلى الله عليه
وسلم بالنصرة، وبعده بالفقر

The share of the Prophet ﷺ lapsed with his demise, just as did the *ṣafī*[1404] and the share of [his] close relatives who were entitled to it during the time of the Prophet ﷺ due to victory, and after him due to poverty.

وإذا دخل الواحد أو الاثنان إلى دار الحرب مغيرين بغير إذن
الإمام فأخذوا شيئا لم يخمس

When one or two people enter enemy territory raiding without the leader's permission and they take something, the fifth is not taken from it.

وإن دخل جماعة لهم منعة فأخذوا شيئا خمس، وإن لم يأذن لهم
الإمام

But if a body [of people] who have power enter [it] and take something [from it], a fifth is taken from it, even if the leader (Imam) had not authorised them.

وإذا دخل المسلم دار الحرب تاجرا فلا يحل له أن يتعرض بشيء
من أموالهم ولا من دمائهم، فإن غدر بهم وأخذ شيئا ملكه ملكا
محظورا، ويؤمر أن يتصدق به

When a Muslim enters enemy territory as a trader, it is not lawful for him to attack anything of their property or their lives. If he deceives them and takes something, he acquires ownership of it [but] with an embargoed ownership[1405] and is ordered to give it away as *ṣadaqah* (in charity).

وإذا دخل الحربي إلينا مستأمنا لم يمكن أن يقيم في دارنا سنة

When a belligerent (*ḥarbī*) comes to us [the Muslims] as someone seeking temporary protection (*musta'min*), it is not possible for him to stay in [our] land for one year.

ويقول له الإمام: إن أقمت تمام السنة وضعت عليك الجزية

The leader says to him, “If you stay for a whole year, I shall impose *jizyah* on you.”

فإن أقام سنة أخذت منه الجزية، وصار ذميا، ولم يترك أن يرجع إلى دار الحرب

So, if he stays for a year, *jizyah* should be taken from him and he is [classified] as a non-Muslim living under Muslim governance (*dhimmī*), and he is not left to return to enemy territory (*dār al-ḥarb*).

و إن عاد إلى دار الحرب وترك وديعة عند مسلم أو ذمي أو دينا في ذمتهم فقد صار دمه مباحا بالعود وما في دار الإسلام من ماله على خطر، فإن أسر أو ظهر على الدار فقتل سقطت ديونه وصارت الوديعة فيئا

If he does return to enemy territory and leaves goods with a Muslim or a non-Muslim living under Muslim governance (*dhimmī*), or [he leaves] a debt in their care, his blood becomes lawful by his returning [to enemy territory], and whatever of his property is in the Muslim land is [now] at risk.[1406] If he is taken prisoner-of-war, or the [enemy] territory is overcome and he is killed, his debts lapse and his goods become *fay’*-booty.

وما أوجف عليه المسلمون من أموال أهل الحرب بغير قتال يصرف في مصالح المسلمين كما يصرف الخراج

Whatever of the enemy combatants’ property the Muslims capture without fighting, is spent on the welfare of the Muslims, just as the land-tax (*kharāj*) is spent.

وأرض العرب كلها أرض عشر، وهي: ما بين العذيب إلى أقصى حجر باليمن بمهرة إلى حد مشارق الشام

Arabian land is all land of *‘ushr*.[1407] It [includes] whatever is between ‘Udhayb[1408] and the furthest stone of Yemen in Mahrah, to the extent of the easternmost parts of Syria.

والسواد كلها أرض خراج، وهي: ما بين العذيب إلى عقبة حلوان، ومن العلث إلى عبادان

The Sawād[1409] is all land of *kharāj*. It [includes] whatever is between ‘Udhayb and ‘Aqabah Ḥulwān, and from ‘Alth[1410] to ‘Abbādān (Abadan).[1411],[1412]

وأرض السواد مملوكة لأهلها: يجوز بيعهم لها، وتصرفهم فيها

The land of the Sawād is owned by its inhabitants. Selling it as well as transacting with it is permitted for them.

وكل أرض أسلم أهلها عليها أو فتحت عنوة وقسمت بين الغانمين فهي أرض عشر

All land whose owners become Muslim, or which has been conquered by force and has been distributed amongst the conquering fighters, is the land of *‘ushr*.[1413]

وكل أرض فتحت عنوة فأقر أهلها عليها فهي أرض خراج

All land conquered by force whose owners[1414] are confirmed [in ownership of] it is the land of the land-tax (*kharāj*).

ومن أحيا أرضا مواتا فهي عند أبي يوسف رحمه الله تعالى معتبرة بحيزها: فإن كانت من حيز أرض الخراج فهي خراجية، وإن كانت من حيز أرض العشر فهي عشرية

Whoever revivifies barren land, it is determined according to its closeness, according to Abū Yūsuf, may Allah have mercy on him; so, if it is close to the land of the land-tax (*kharāj*), it is subject to the land-tax (*kharājiyyah*), and if it is close to the land of the tenth (*‘ushr*), [then] it is subject to a tenth (*‘ushriyyah*).

والبصرة عندنا عشرية بإجماع الصحابة رضي الله تعالى عنهم

According to us [Muslims], Baṣra is subject to a tenth (*‘ushriyyah*), because of the consensus of the Companions, may Allah be pleased with them.

وقال محمد رحمه الله تعالى: إن أحياها ببئر حفرها أو بعين استخرجها أو بماء دجلة أو الفرات أو الأنهار العظام التي لا يملكها أحد فهي عشرية، وإن أحياها بماء الأنهار التي احتفرها الأعاجم مثل نهر الملك ونهر يزدجرد فهي خراجية

Muḥammad, may Allah have mercy on him, said [that] if he revivifies it by a well which he digs, with a spring which he discovers, or by water from the Tigris or Euphrates [rivers], or from major rivers which nobody owns, then it is subject to a tenth (*ʻushriyyah*), but if he revivifies it with the water of rivers which non-Arabs had dug, like the river of the king and the River Yazdagird,[1415] then it is subject to land-tax (*kharājiyyah*).

والخراج الذي وضعه عمر رضي الله تعالى عنه على أهل السواد، من كل جريب يبلغه الماء ويصلح للزرع قفيز هاشمي وهو الصاع ودرهم، ومن جريب الرطبة خمسة دراهم، ومن جريب الكرم المتصل والنخل المتصل عشرة دراهم

The land-tax that ʻUmar ﷺ imposed on the people of the Sawād, was:

1. For every arable patch of land (*jarīb*)[1416] which water reached,[1417] and which was good enough for cultivation, the Hashemite *qafīz*,[1418] [which is] a *ṣāʻ* and a dirham,
2. For every lush arable patch of land (*jarīb*), five dirhams, and
3. For every arable patch of land (*jarīb*) [full] of contiguous grapevines and contiguous date-palms, ten dirhams.

وما سوى ذلك من الأصناف يوضع عليها بحسب الطاقة، فإن لم تطق ما وضع عليها نقصها الإمام

For other types [of land], [*kharāj*] is imposed upon it according to its capacity. If it cannot support [the amount] that is imposed on it, the leader reduces it.

وإن غلب على أرض الخراج الماء أو انقطع عنها أو اصطلم الزرع آفة فلا خراج عليهم، وإن عطلها صاحبها فعليه الخراج

If water inundates *kharāj* land, or [the water] ceases to [reach] it or a

calamity destroys the crops, then there is no land-tax due from them [the owners], but if its owner leaves it [uncultivated] then land-tax is [still] due from him.

ومن أسلم من أهل الخراج أخذ منه الخراج على حاله

Whoever of the people who [pay] land-tax becomes Muslim, as it stands, land-tax is [still] taken from him.

ويجوز أن يشتري المسلم من الذمي أرض الخراج ، ويؤخذ منه الخراج

It is permitted for a Muslim to buy land of *kharāj* from a non-Muslim living under Muslim governance (*dhimmī*), and land-tax is [nevertheless] taken from him.

ولا عشر في الخارج من أرض الخراج

There is no tenth (*'ushr*) due on the produce of the land of *kharāj*.

On *Jizyah* – The Capitation on Non-Muslims Living under Muslim Governance (*Dhimmīs*)

والجزية على ضربين: جزية توضع بالتراضي والصلح، فتقدر بحسب ما يقع عليه الاتفاق، وجزية يبتدئ الإمام بوضعها إذا غلب الإمام على الكفار وأقرهم على أملاكهم

Jizyah is of two types:

1. *Jizyah* which is imposed by mutual agreement and treaty.[1419] It is determined according to what agreement is reached on, and
2. *Jizyah* which the leader (Imam*)* initiates by enforcing it, when the leader defeats the disbelievers, and confirms them [as owners] of their properties.

فيضع على الغني الظاهر الغناء في كل سنة ثمانية وأربعين درهما يأخذ منه في كل شهر أربعة دراهم، وعلى المتوسط الحال أربعة وعشرين درهما في كل شهر درهمين، وعلى الفقير المعتمل اثني عشر درهما في كل شهر درهم

He [the Imam] imposes [as *jizyah*]:

1. On the obviously wealthy [non-Muslim living under Muslim governance],[1420] forty-eight dirhams per year, he takes four dirhams per month from him,
2. On the [non-Muslim living under Muslim governance (*dhimmī*) of] average condition,[1421] twenty-four dirhams – two dirhams per month, and
3. On the labouring poor,[1422] twelve dirhams – one dirham per month.

وتوضع الجزية على أهل الكتاب والمجوس وعبدة الأوثان من العجم، ولا توضع على عبدة الأوثان من العرب ولا على المرتدين

Jizyah is imposed on the People of the Book (*Ahl al-Kitāb*), the Magians and on the idolaters from the non-Arabs, but it is not imposed on the idolaters of the Arabs nor on the apostates.

ولا جزية على امرأة، ولا صبي، ولا زمن، ولا على فقير غير معتمل، ولا على الرهبان الذين لا يخالطون الناس

There is no *jizyah* due from women, minors, the chronically ill, the unemployed poor [*dhimmīs*] or [hermit] monks who do not mix with people.

ومن أسلم وعليه جزية سقطت عنه

Whoever becomes Muslim and there was *jizyah* [due] from him, it lapses from him.

وإن اجتمع عليه الحولان تداخلت الجزيتان

When two years combine upon [the non-Muslim living under Muslim governance (*dhimmī*)], both *jizyahs* combine with one another.[1423]

ولا يجوز إحداث بيعة ولا كنيسة في دار الإسلام، و إذا انهدمت البيع والكنائس القديمة أعادوها

It is not permitted to build a new church or synagogue in the Muslim lands, but when old synagogues and churches fall into ruin, they rebuild them.

و يؤخذ أهل الذمة بالتميّز عن المسلمين في زيهم ومراكبهم وسروجهم وقلانسهم، ولا يركبون الخيل، ولا يحملون السلاح

Non-Muslims living under Muslim governance (*ahl adh-dhimmah*) are required to preserve a distinction from the Muslims in their dress, their mounts, their saddles and their headgear. They do not mount horses or bear arms.

ومن امتنع من الجزية، أو قتل مسلما، أو سب النبي صلى الله عليه وسلم أو زنى بمسلمة لم ينقض عهده

Whoever refuses [to pay] *jizyah*, kills a Muslim, insults the Prophet ﷺ or has unlawful sexual intercourse with a Muslim woman, his contract has not been violated.[1424]

ولا ينتقض العهد إلا بأن يلحق بدار الحرب، أو يغلبوا على موضع فيحاربوننا

The contract is not violated except when he takes [himself] to enemy territory (*dār al-ḥarb*), or they [the non-Muslims living under Muslim governance (*dhimmīs*)] overrun a place and wage war against us [the Muslims].

On Apostates (*Murtadds*)

و إذا ارتد المسلم عن الإسلام عرض عليه الإسلام، فإن كانت له شبهة كشفت له، ويحبس ثلاثة أيام، فإن أسلم و إلا قتل، فإن قتله قاتل قبل عرض الإسلام عليه كره له ذلك، ولا شيء على القاتل

When a Muslim reneges on Islam, Islam is presented to him. If he has any doubt [about Islam], it is explained to him. He is imprisoned for three

days.[1425] If he accepts Islam [it is better for him], otherwise, he is executed. If someone kills him prior to presenting Islam to him that is abhorrent, but there is nothing [as liability] against the killer.

وأما المرأة إذا ارتدت فلا تقتل، ولكن تحبس حتى تسلم

As for women who renege [on Islam], they are not killed but are imprisoned until they become Muslims.

ويزول ملك المرتد عن أمواله بردته زوالا مراعًى، فإن أسلم عادت أملاكه إلى حالها

The ownership of the renegade concerning his property ceases because of his reneging, [and is kept] in custody.[1426] Then, if he becomes Muslim [again], it returns to its [previous] state.[1427]

وإن مات أو قتل على ردته انتقل ما اكتسبه في حال الإسلام إلى ورثته المسلمين، وكان ما اكتسبه في حال ردته فيئا

If someone dies or is killed whilst a renegade, whatever he earned in [his] state of Islam (i.e. as a Muslim) is transferred to his Muslim heirs. Whatever he earned as a renegade is *fay'*-booty.[1428]

فإن لحق بدار الحرب مرتدا وحكم الحاكم بلحاقه، عتق مدبروه وأمهات أولاده، وحلت الديون التي عليه، وانتقل ما اكتسبه في حال الإسلام إلى ورثته من المسلمين، وتقضى الديون التي لزمته في حال الإسلام مما اكتسبه في حال الإسلام، وما لزمه من الديون في ردته تقضى مما في حال ردته

If he took [himself] to enemy territory as a renegade, and the judge (*ḥākim*) has declared [official] his removal [to enemy territory]:

1. His slaves who were to be set free on his death (*mudabbars*) and the slave-women who were mothers of his children (*umm al-walads*) are set free,
2. The debts upon him fall due,[1429]
3. Whatever he earned in the state of Islam is transferred to his heirs from among the Muslims,

4. The debts binding upon him in the state of Islam are paid from whatever he earned while a Muslim, and whatever debts became binding on him while a renegade are paid from that [what he earned] while a renegade.

وما باعه أو اشتراه أو تصرف فيه من أمواله في حال ردته موقوف: فإن أسلم صحت عقوده، وإن مات أو قتل أو لحق بدار الحرب بطلت

Whatever he sold, bought or transacted with from his [own] property in the state of his reneging, is suspended.[1430] Then, if he becomes a Muslim [again], his contracts become valid, but if he dies, is killed or takes himself to enemy territory, they are void.

وإن عاد المرتد بعد الحكم بلحاقه إلى دار الإسلام مسلما، فما وجده في يد ورثته من ماله بعينه أخذه

If the renegade returns as a Muslim after his taking himself to enemy territory has become official, whatever tangible item of his own property he finds in the possession of his heirs, he takes [back].

والمرتدة إذا تصرفت في مالها في حال ردتها جاز تصرفها

When the female renegade transacts with her property in the state of her reneging, her transacting with it is permitted.[1431]

ونصارى بني تغلب يؤخذ من أموالهم ضعف ما يؤخذ من المسلمين من الزكاة، ويؤخذ من نسائهم، ولا يؤخذ من صبيانهم

With regards to the Christians of Banū Taghlib,[1432] twice what is taken as *zakāh* from Muslims is taken from their wealth.[1433] [It] is [also] taken from their women but not from their minors.[1434]

وما جباه الإمام من الخراج ومن أموال بني تغلب وما أهداه أهل الحرب إلى الإمام والجزية تصرف في مصالح المسلمين: فتسد منها الثغور، وتبنى القناطر والجسور، ويعطى منه قضاة المسلمين وعمالهم وعلماؤهم ما يكفيهم، ويدفع منه أرزاق المقاتلة وذراريهم

Whatever the leader has collected as *kharāj* from the properties of the Banū Taghlib, and whatever those at war [with the Muslims] have given as gifts to the leader, and the *jizyah* are [all] spent upon the welfare of the Muslims. With it, frontiers are secured, bridges and aqueducts built, and from it, the judges of the Muslims, their administrators and their scholars are paid whatever [amount] is sufficient for them, and from it, the provisions of the soldiers and their children are [also] paid.

باب البغاة

REBELS (*BĀGHĪS*)

وإذا تغلب قوم من المسلمين على بلد وخرجوا من طاعة الإمام دعاهم إلى العود إلى الجماعة، وكشف عن شبهتهم

When a group of Muslims take over some land and they leave obedience to the leader (Imam), he invites them to return to the [united] body, and he dispels their doubts.[1435]

ولا يبدؤهم بالقتال حتى يبدؤوه، فإن بدؤوا قاتلهم حتى يفرق جماعتهم

He does not initiate fighting against them unless they initiate [it] against him. Then, if they initiate [fighting], he fights them until he disperses their group.

وإن كانت لهم فئة أجهز على جريحهم واتبع مُوَليهم، وإن لم يكن لهم فئة لم يجهز على جريحهم ولم يتبع موليهم

If they have a band [waiting by], [then] one hastens to kill their wounded and give chase to those of them who flee. If they do not have a band, then one does not hasten to kill their wounded or give chase to those of them who flee.

ولا تسبى لهم ذرية، ولا يقسم لهم مال

Their children are not imprisoned and their property is not distributed [as booty].[1436]

ولا بأس بأن يقاتلوا بسلاحهم إن احتاج المسلمون إليه

If the Muslims need to, there is no objection that they fight them with their own (the rebels') weapons.[1437]

ويحبس الإمام أموالهم، ولا يردها عليهم، ولا يقسمها حتى يتوبوا فيردها عليهم

The leader holds their property and does not return it to them – but he does not distribute it – until they repent, then he returns it to them.

وما جباه أهل البغي من البلاد التي غلبوا عليها من الخراج والعشر لم يأخذه الإمام ثانياً

Whatever land-tax (*kharāj*) and the (*'ushr*) the rebels had collected from the lands which they conquered, the leader (Imam) does not take from them [the inhabitants] a second time.

فإن كانوا صرفوه في حقه أجزأ من أخذ منه، وإن لم يكونوا صرفوه في حقه فعلى أهله في ما بينهم وبين الله تعالى أن يعيدوا ذلك

If they had spent it on its rightful purposes, it discharges [the duty] of those from whom it was taken, but if they had not spent it for its rightful purposes, then it is a duty on them that they should repay it for the sake of whatever is between them and Allah, exalted is He.[1438]

كتاب الحظر والإباحة

ḤAẒR WA IBĀḤAH – PROHIBITION & PERMISSIBILITY

لا يحل للرجال لبس الحرير، ويحل للنساء، ولا بأس بتوسده عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يكره توسده

Wearing silk is not lawful for men but it is lawful for women. There is no objection to using [silk] as a pillow, according to Abū Ḥanīfah, may Allah have mercy on him, but they,[1439] may Allah have mercy on them, said that using it as a pillow[1440] is disapproved.

ولا بأس بلبس الحرير و الديباج في الحرب عندهما رحمه الله تعالى، و يكره عند أبي حنيفة رحمه الله تعالى

There is no objection to wearing silk or brocade in battle, according to them,[1441] may Allah have mercy on them, but it is disapproved according to Abū Ḥanīfah, may Allah have mercy on him.

ولا بأس بلبس الملحم إذا كان إبريسما ولحمته قطنا أو خزا

There is no objection to wearing something woven (*mulḥam*), when its [warp] is silk and you make the weft with cotton or silky fabric (*khazz*).[1442]

ولا يجوز للرجال التحلي بالذهب والفضة، و لا بأس بالخاتم والمنطقة، وحلية السيف من الفضة

It is not permitted for men to wear jewellery [made] of gold and silver, but there is no objection to a ring, belt and the decoration of a sword from silver.

ويجوز للنساء التحلي بالذهب والفضة

It is permitted for women to wear jewellery [made] of gold and silver.

ويكره أن يلبس الصبي الذهب والحرير

It is disapproved for a [male] minor to be dressed in gold and silk.

ولا يجوز الأكل والشرب والادهان والتطيب في آنية الذهب والفضة للرجال والنساء

It is not permitted to eat, drink, [apply] oil and perfume from receptacles of gold and silver, for [both] men and women.

ولا بأس باستعمال آنية الزجاج و الرصاص والبلور والعقيق

There is no objection to the use of receptacles [made] of glass, lead, crystal and carnelian.

ويجوز الشرب في الإناء المفضض عند أبي حنيفة رحمه الله تعالى، والركوب على السرج المفضض، والجلوس على السرير المفضض

It is permitted to drink from a silver-plated vessel, according to Abū Ḥanīfah, may Allah have mercy on him, as well as being mounted on a silver-plated saddle and sitting on a silver-plated bed.

ويكره التعشير في المصحف والنقط

It is disapproved to mark every ten verses of the written copy of the Qur'ān (*muṣḥaf*)[1443] and to dot [the letters].

ولا بأس بتحلية المصحف، ونقش المسجد، وزخرفته بماء الذهب

There is no objection to the decoration of the written copy of the Qur'ān, decorating the mosque and ornamenting it with liquid gold.[1444]

ويكره استخدام الخصيان

It is disapproved to employ eunuchs.

ولا بأس بخصاء البهائم، و إنزاء الحمير على الخيل

There is no objection to the castration of animals and getting a [male] donkey to mount[1445] a [female] horse.[1446]

ويجوز أن يقبل في الهدية والإذن قول العبد والصبي

It is permitted to accept the statement of slaves and minors in [cases of] gifts and authorising [a slave].

ويقبل في المعاملات قول الفاسق

In [cases of] ordinary transactions (*mu'āmalāt*),[1447] the statement of the dissolute is [legally] accepted.[1448]

ولا يقبل في أخبار الديانات إلا قول العدل

In [cases of] religious matters (*diyānāt*),[1449] nothing but the statement of the morally upright is accepted.

ولا يجوز أن ينظر الرجل من الأجنبية إلا إلى وجهها وكفيها، فإن
كان لا يأمن من الشهوة لا ينظر إلى وجهها إلا لحاجة

It is not permitted for a man to look at [any bodily part] of a female non-relative (*ajnabiyyah*) except her face and her palms. If he is not safe from sexual desire, he does not look at her face except out of necessity.

ويجوز للقاضي إذا أراد أن يحكم عليها، وللشاهد إذا أراد الشهادة
عليها النظر إلى وجهها، وإن خاف أن يشتهي

It is permitted for the judge to look at the face of [a woman], when he wishes to pronounce a judgement upon her, and for the witness when he wishes to testify against her, even though they fear becoming aroused.

ويجوز للطبيب أن ينظر إلى موضع المرض منها

It is permitted for the doctor to look at the locus of disease on her [body].

وينظر الرجل من الرجل إلى جميع بدنه، إلا ما بين سرته إلى ركبته

A man may look at the whole body of a man, except what is between his navel up to [and including] his knee.

ويجوز للمرأة أن تنظر من الرجل إلى ما ينظر إليه الرجل

It is permitted for women to look at in a man whatever a man may look at.[1450]

وتنظر المرأة من المرأة إلى ما يجوز للرجل أن ينظر إليه من الرجل

A woman may look at [the same bodily parts] of a woman which are permitted for a man to look at in another man.

وينظر الرجل من أمته التي تحل له وزوجته إلى فرجها

In the cases of his slave-woman who is lawful to him and of his wife, a man may look at their genitalia.

وينظر الرجل من ذوات محارمه إلى الوجه، والرأس، والصدر، والساقين، والعضدين، ولا ينظر إلى ظهرها وبطنها و فخذها، ولا بأس بأن يمس ما جاز له أن ينظر إليه منها

With respect to his un-marriageable (*maḥram*) females,[1451] a man may look at the face, head, chest, lower legs, and arms, but he cannot look at her back, belly or thighs. There is no objection if he touches those [parts] of her [body] it is permitted for him to look at.

وينظر الرجل من مملوكة غيره إلى ما يجوز له أن ينظر إليه من ذوات محارمه، ولا بأس بأن يمس ذلك إذا أراد الشراء، وإن خاف أن يشتهي

A man may look at in someone else's slave-woman, that which it is permitted for him to look at of his [own] un-marriageable (*maḥram*) females. There is no objection to him touching that [part] when he intends to purchase [her], even if he fears that he will be [sexually] aroused.

والخصي في النظر إلى أجنبية كالفحل

The eunuch, in [terms of] looking at the female non-relative is the same as the un-castrated male.

ولا يجوز للمملوك أن ينظر من سيدته إلا إلى ما يجوز للأجنبي النظر إليه منها

It is not permitted for a slave to look at [any bodily parts] of his mistress except that of her which it is permitted for the male non-relative (*ajnabī*) to look at.[1452]

ويعزل عن أمته بغير إذنها، ولا يعزل عن زوجته إلا بإذنها

One may practise coitus interruptus (*‘azl*) with his slave-woman without her permission but he may not practise coitus interruptus with his wife without her permission.

ويكره الاحتكار في أقوات الآدميين والبهائم، إذا كان ذلك في
بلد يضر الاحتكار بأهله، ومن احتكر غلة ضيعته، أو ما جلبه
من بلد آخر، فليس بمحتكر

It is abhorrent to hoard the foodstuffs of humans and animals when that is in a land where hoarding would be harmful to its inhabitants. Whoever hoards grain off his own estate or what he has imported from another land is not [considered] to be hoarding.

ولا ينبغي للسلطان أن يسعر على الناس

The Sulṭān ought not to set prices for the people.

ويكره بيع السلاح في أيام الفتنة، ولا بأس ببيع العصير ممن يعلم
أنه يتخذه خمرا

The sale of weapons during days of civil strife is abhorrent, but there is no objection to the sale of expressed fruit-juice to someone whom it is known will make wine from it.[1453]

كتاب الوصايا

WAṢĀYĀ – BEQUESTS

الوصية غير واجبة، وهي مستحبة، ولا تجوز الوصية للوارث إلا أن يجيزها الورثة، ولا تجوز بما زاد على الثلث، ولا تجوز الوصية للقاتل، ويجوز أن يوصي المسلم للكافر، والكافر للمسلم

Making a bequest (*waṣiyyah*) is not obligatory, but it is recommended. [Making a] bequest to an heir is not permitted unless the [other] heirs permit it.[1454]

It is not allowed in anything over a third.[1455]

The bequest in favour of a homicide is not permitted.[1456]

It is permitted for a Muslim to make a bequest to a disbeliever, and a disbeliever to a Muslim.

وقبول الوصية بعد الموت، فإن قبلها المُوصَى له في حال الحياة أو ردها فذلك باطل

The acceptance of the bequest is after the death [of the testator (*mūṣī*)]. So, if the legatee (*mūṣā lahū*) accepts it during the life [of the testator], or rejects it, that [decision] is void.

و يستحب أن يوصي الإنسان بدون الثلث

It is recommended that a person bequeaths less than a third [of his property].

و إذا أوصى إلى رجل فقبل الوصية في وجه الموصي وردها في غير وجهه فليس برد و إن ردها في وجهه فهو رد

When [the testator] bequeaths to a man, and he (i.e. the legatee) accepts the bequest in the presence of the testator but declines it when out of his presence, then that is not a [valid] refusal, but if he declines it in the presence

of [the testator] then that is a [valid] refusal.

والموصى به يملك بالقبول إلا في مسألة واحدة، وهي: أن يموت الموصي، ثم يموت الموصى له قبل القبول، فيدخل الموصى به في ملك ورثته

The bequest (*mūṣā bihī*) becomes owned by acceptance [by the legatee] except in one case and that is if the testator dies, then later the legatee [also] dies prior to acceptance, [in which case] the bequest enters the property of the heirs of the deceased.[1457]

ومن أوصى إلى عبد أو كافر أو فاسق أخرجهم القاضي من الوصية ونصب غيرهم

Whoever bequeaths to a slave, a disbeliever or someone dissolute, the judge excludes them from the bequest and appoints [someone] other than them.

ومن أوصى إلى عبد نفسه وفي الورثة كبار لم تصح الوصية

Whoever bequeaths to his own slave while there are elders among the heirs, the bequest is invalid.

ومن أوصى إلى من يعجز عن القيام بالوصية ضم إليه القاضي غيره

Whoever bequeaths to someone who is incapable of implementing the bequest, the judge associates another person with him.[1458]

ومن أوصى إلى اثنين لم يجز لأحدهما أن يتصرف عند أبي حنيفة ومحمد رحمهما الله تعالى دون صاحبه، إلا في شراء كفن الميت وتجهيزه، وطعام أولاده الصغار وكسوتهم، ورد وديعة بعينها، وتنفيذ وصية بعينها، وعتق عبد بعينه، وقضاء الدين والخصومة في حقوق الميت

Whoever bequeaths to two [persons], it is not permitted for either of the two to transact [with it] without his associate, according to Abū Ḥanīfah and Muḥammad, may Allah have mercy on them, except in:

1. Purchase of a shroud for the deceased,

2. His [funeral and burial] preparation,
3. Food for his minor children and their clothing,
4. The return of specific deposits,
5. The execution of a specific bequest,
6. Setting a specific slave free, and
7. The payment of debts and litigations with respect to the deceased.[1459]

ومن أوصى لرجل بثلث ماله وللآخر بثلث ماله ولم تجز الورثة فالثلث بينهما نصفان

Whoever bequeaths a third of his property to a man, and a third of his property to another, and the heirs do not allow [this], then [only] a third is [shared] between the two in two halves.[1460]

وإن أوصى لأحدهما بالثلث وللآخر بالسدس فالثلث بينهما أثلاثا

If [the testator] bequeaths a third to one of the two, and a sixth to the other, then the third is [shared] between both of them in thirds.[1461]

وإن أوصى لأحدهما بجميع ماله وللآخر بثلث ماله ولم تجز الورثة فالثلث بينهما على أربعة أسهم عند أبي يوسف ومحمد رحمهما الله تعالى، وقال أبو حنيفة رحمه الله تعالى: الثلث بينهما نصفان

If he bequeathed his entire property to one of the two and a third of his property to the other and the heirs do not allow [that], then the third is [shared] between the two in four portions, according to Abū Yūsuf and Muḥammad, may Allah have mercy on them.[1462] Abū Ḥanīfah, may Allah have mercy on him, said that the third is [shared] between both of them in two halves.

ولا يضرب أبو حنيفة رحمه الله تعالى للموصى له بما زاد على الثلث إلا في المحاباة، والسعاية والدراهم المرسلة

Abū Ḥanīfah, may Allah have mercy on him, does not give to the legatee anything in excess of a third except in [the cases of]:

1. *Muḥābāh,*[1463]
2. *Si'āyah,*[1464] and

3. Darāhim mursalah.[1465]

ومن أوصى وعليه دين يحيط بماله لم تجز الوصية، إلا أن يبرئ الغرماء من الدين

Whoever makes a bequest and there is a debt which he owes which overwhelms his property, the bequest is not permitted[1466] unless the creditors release [him] from the debt.

ومن أوصى بنصيب ابنه فالوصية باطلة، وإن أوصى بمثل نصيب ابنه جازت، فإن كان له ابنان فللموصى له الثلث

Whoever bequeaths the share of his son, the bequest is void. If he bequeaths an [amount] equal to the share of his son, it is permitted. Then, if he has two sons, the legatee has a third [as maximum].

ومن أعتق عبده في مرضه، أو باع وحابى، أو وهب، فذلك كله جائز وهو معتبر من الثلث ويضرب به مع أصحاب الوصايا

Whoever sets his slave free during his [terminal] illness,[1467] or sells, or performs *muḥābāh*, or gives as a gift, then all of that is permitted and it is taken into account from the third [of his property],[1468] and the sharers in the bequests are given from it.[1469]

فإن حابى ثم أعتق فالمحاباة أولى عند أبي حنيفة رحمه الله تعالى، وإن أعتق ثم حابى فهما سواء، وقالا رحمهما الله تعالى : العتق أولى في المسألتين

If he performs *muḥābāh*, then later sets [the slave] free, the *muḥābāh* is more excellent, according to Abū Ḥanīfah, may Allah have mercy on him. If he sets [the slave] free, then later performs *muḥābāh*, they are both the same. They,[1470] may Allah have mercy on them, said that setting a slave free is more excellent in both cases.

ومن أوصى بسهم من ماله فله أخس سهام الورثة، إلا أن ينقص عن السدس فيتمم له السدس

Whoever bequeaths a portion of his property, then he [the person to whom

it was bequeathed, i.e. the legatee] has the inferior [portion] from the portions of the heirs, unless it becomes less than a sixth in which case the sixth is topped up for him.

وإن أوصى بجزء من ماله قيل للورثة: أعطوه ما شئتم

If he bequeaths a part of his property, it is said to the heirs, "Give to him whatever you wish."

ومن أوصى بوصايا من حقوق الله تعالى قدمت الفرائض منها على غيرها قدمها الموصى أو أخرها، مثل الحج، والزكاة، والكفارات، وما ليس بواجب قدم منه ما قدمه الموصي

Whoever bequeaths bequests regarding [the performance of] the rights of Allah, exalted is He, the obligations (*farā'iḍ*) are given priority over others, [irrespective of whether] the testator advanced them or delayed them [when mentioning them], such as the *ḥajj*, *zakāh* and expiations. Whatever of it is not obligatory is given the priority that the testator gave it [when mentioning them].

ومن أوصى بحجة الإسلام أحجوا عنه رجلا من بلده، يحج راكبا، فإن لم تبلغ الوصية النفقة أحجوا عنه من حيث تبلغ

Whoever bequeaths [the performance of] the *ḥajj* of Islam, [the heirs] should send one person for *ḥajj* from his city on his behalf, who [sets forth] mounted. If [the property of] the bequest does not reach [the level of] expenditure [to be incurred], then they send someone forth for *ḥajj* on his behalf from whichever [place] it reaches.

ومن خرج من بلده حاجاً فمات في الطريق وأوصى أن يحج عنه حج عنه من بلده عند أبي حنيفة رحمه الله تعالى، و قالا رحمهما الله تعالى: يحج عنه من حيث مات

Whoever proceeds from his city as a *ḥājjī* and dies along the way, and bequeaths that *ḥajj* be performed on his behalf, [then] *ḥajj* is performed on his behalf from his city, according to Abū Ḥanīfah, may Allah have mercy on him. They,[1471] may Allah have mercy on them, however, said that *ḥajj* is

performed on his behalf from [the location] where he died.

ولا تصح وصية الصبي، والمكاتب وإن ترك وفاء

The bequest of a minor or of a slave who has contracted to purchase his freedom (*mukātab*) is not valid, even though they leave enough [property behind].[1472]

ويجوز للموصي الرجوع عن الوصية، وإذا صرّح بالرجوع كان رجوعا، ومن جحد الوصية لم يكن رجوعا

Retracting the bequest is permitted for the testator. If he announces the retraction, it is a [valid] retraction. Whoever disputes the bequest, it is not [considered] a retraction.

ومن أوصى لجيرانه فهم الملاصقون عند أبي حنيفة رحمه الله تعالى

Whoever bequeaths to his neighbours, then they are the adjacent [neighbours], according to Abū Ḥanīfah, may Allah have mercy on him.

ومن أوصى لأصهاره فالوصية لكل ذي رحم محرم من امرأته

Whoever bequeaths to his in-laws (*aṣhār*), the bequest is for every un-marriageable relative (*dhū raḥim maḥram*) on [the side of] his wife.

ومن أوصى لأختانه فالختن زوج كل ذات رحم محرم منه

Whoever bequeaths to his *akhtān*, then they are the husbands of every one of his un-marriageable female relatives.[1473]

ومن أوصى لأقربائه فالوصية للأقرب فالأقرب من كل ذي رحم محرم منه، ولا يدخل فيهم الوالدان والولد، وتكون للاثنين فصاعدا

Whoever bequeaths to his close relatives (*aqribā'*), the bequest is to the closest, then the [next] closest of every un-marriageable relative (*dhū raḥm maḥram*). [Neither the] parents nor children are included in them, and it is for two [persons] or more.[1474]

و إذا أوصى بذلك وله عمان وخالان، فالوصية لعميه عند أبي حنيفة رحمه الله تعالى، و إن كان له عم وخالان، فللعم النصف، وللخالين النصف

When someone bequeaths that, and he has two paternal uncles and two maternal uncles, the bequest is for his two paternal uncles, according to Abū Ḥanīfah, may Allah have mercy on him, but if he has one paternal uncle and two maternal uncles, then the paternal uncle has a half [of the bequest] and the two maternal uncles have [the other] half.

وقالا رحمهما الله تعالى : الوصية لكل من ينسب إلى أقصى أب له في الإسلام

They,[1475] may Allah have mercy on them, said that the bequest [which is made to his relatives] is for everyone who is a descendent of the most distant [paternal] grandfather of his in Islam.

ومن أوصى لرجل بثلث دراهمه أو بثلث غنمه، فهلك ثلثا ذلك وبقي ثلثه وهو يخرج من ثلث ما بقي من ماله فله جميع ما بقي

Whoever bequeaths to a man a third of his dirhams or a third of his sheep and goats, and two-thirds of that perish and a third remains, and it proceeds out of a third of whatever of his property is left, then [the legatee] has the whole of whatever remains.

ومن أوصى بثلث ثيابه فهلك ثلثاها وبقي ثلثها وهو يخرج من ثلث ما بقي من ماله لم يستحق إلا ثلث ما بقي من الثياب

Whoever bequeaths a third of his garments, and two-thirds of them perish and [only] a third of them remains, and it proceeds from a third of whatever of his property remains, he is only entitled [to] a third of what remains of the garments.

ومن أوصى لرجل بألف درهم وله مال عين ودين، فإن خرج الألف من ثلث العين دفعت إلى الموصى له، و إن لم تخرج دفع إليه ثلث العين، وكلما خرج شيء من الدين أخذ ثلثه حتى يستوفي الألف

Whoever bequeaths to a man a thousand dirhams, and he [himself] has tangible property (*‘ayn*) and [also he is owed] debts (*dayn*), if a thousand be produced from a third of the tangible [property], it is paid to the legatee, but if it cannot be produced [from it], then a third of the tangible [property] is paid to him. Whenever something is produced from [repayment of] the debt, a third of it is taken until the thousand [dirhams-worth] is paid in full.

وتجوز الوصية للحمل، وبالحمل، إذا وضع لأقل من ستة أشهر من يوم الوصية

Bequest to a foetus is allowed, and [to bequeath] a foetus, when it is delivered in less than six months from the day of the bequest.

و إذا أوصى لرجل بجارية إلا حملها صحت الوصية والاستثناء

Whoever bequeaths a slave-woman to a man, excluding her foetus, the bequest and the exception are [both] valid.

ومن أوصى لرجل بجارية فولدت بعد موت الموصي قبل أن يقبل الموصى له ولدا ثم قبل الموصى له وهما يخرجان من الثلث فهما للموصى له، وإن لم يخرجا من الثلث ضرب بالثلث وأخذ بالحصة منهما جميعا في قول أبي يوسف ومحمد رحمهما الله تعالى، وقال أبو حنيفة رحمه الله تعالى: يأخذ ذلك من الأم، فإن فضل شيءٌ أخذه من الولد

Whoever bequeaths a slave-woman to a man, and she gives birth to a child after the death of the testator [and] prior to the legatee accepting, and then later the legatee accepts, and both of them[1476] proceed from the third [of the total property of the testator], then both of them are the legatee’s. But if they cannot both proceed from the third, he sticks to the third and takes the share from them both in total, according to the verdict of Abū Yūsuf and Muḥammad, may Allah have mercy on them. Abū Ḥanīfah, may Allah have mercy on him, however, said that he takes that [share which is not more than a third of the total] from the mother. If anything is left over, he then takes it from the child.

وتجوز الوصية بخدمة عبده وسكنى داره، سنين معلومة، وتجوز ذلك أبدا

Bequest of the service of his [the testator's] slave and residency in his house for a specified [number of] years is permitted, and that is also permitted indefinitely.

فإن خرجت رقبة العبد من الثلث سلم إليه للخدمة، و إن كان لا مال له غيره خدم الورثة يومين والموصى له يوما، فإن مات الموصى له عاد إلى الورثة، و إن مات الموصى له في حياة الموصى بطلت الوصية

If the bondage of the slave proceeds from the third, he is submitted to [the legatee] for service. If [the testator] has no property other than him, [the slave] serves the heirs for two days, and [serves] the legatee for one day. If the legatee dies, [the slave] returns to the heirs, but if the legatee dies during the life of the testator, the bequest is void.

و إذا أوصى لولد فلان فالوصية بينهم: الذكر والأنثى فيه سواء

When someone makes a bequest to the children of so-and-so, the bequest is between them, the male and the female being equal in that respect.

و إن أوصى لورثة فلان فالوصية بينهم: للذكر مثل حظ الأنثيين

If the testator makes a bequest to the heirs of so-and-so, the bequest is between them [according to]: "*For the male there is the equivalent of the share of two females*."[1477]

ومن أوصى لزيد وعمرو بثلث ماله، فإذا عمروٌ ميت، فالثلث كله لزيد

Whoever bequeaths to Zayd and 'Amr a third of his property, but 'Amr was dead [at the time], then the third all goes to Zayd.

و إن قال: «ثلث مالي بين زيد وعمرو» وزيد ميت كان لعمرو نصف الثلث

If he says, "A third of my property is [to be shared] between Zayd and 'Amr," and Zayd was dead [at the time], 'Amr has a half of the third.[1478]

ومن أوصى بثلث ماله ولا مال له ثم اكتسب مالا استحق الموصى
له ثلث ما يملكه عند الموت

Whoever bequeaths a third of his property and he has no property [at all], then later he earns some property, the legatee is entitled to a third of whatever [the testator] owns at [the time of] his death.

كتاب الفرائض

FARĀ'IḌ – INHERITANCE

المجمع على توريثهم من الذكور عشرة: الابن، وابن الابن و إن سفل، والأب، والجد أبو الأب و إن علا، والأخ، وابن الأخ؛ والعم، وابن العم، والزوج، ومولى النعمة

There is unanimous agreement that ten males inherit:

1. A son,
2. A son of a son, even if lower in descent,[1479]
3. A father,
4. A paternal grandfather, even if higher in ascent,[1480]
5. A brother,
6. A son of a brother,
7. A paternal uncle,
8. A son of a paternal uncle,
9. A husband, and
10. A master who sets [his] slave free.

ومن الإناث سبع: البنت، وبنت الابن، والأم، والجدة، والأخت، والزوجة، ومولاة النعمة

and of the females there are seven:

1. A daughter,
2. A daughter of a son,
3. A mother,
4. A grandmother,
5. A sister,
6. A wife, and
7. A mistress who sets her slave free.

ولا يرث أربعة: المملوك، والقاتل من المقتول، والمرتد، وأهل الملتين

Four [people] do not inherit:
1. A slave,
2. A homicide from the person killed,[1481]
3. A person who reneges [on Islam], and
4. People of two [different] religions.[1482]

والفروض المحدودة في كتاب الله تعالى ستة: النصف، والربع، والثمن، والثلثان، والثلث، والسدس

There are six shares fixed in the book[1483] of Allah ﷻ:
1. A half,
2. A quarter,
3. An eighth,
4. Two-thirds,
5. A third, and
6. A sixth.

والنصف فرض خمسة: البنت، وبنت الابن إذا لم تكن بنت الصلب، والأخت لأب وأم، والأخت لأب إذا لم تكن أخت لأب وأم، والزوج إذا لم يكن للميت ولد ولا ولد ابن و إن سفل

The half is the fixed share of five [persons]:
1. A daughter,
2. A daughter of a son, when there is no proper daughter,
3. A full sister,[1484]
4. A half-sister from the same father if there is no full sister, and
5. A husband, when the deceased [woman] has no children and no grandchildren [from a son], no matter how much lower in descent.

والربع للزوج مع الولد وولد الابن و إن سفل، وللمرأة إذا لم يكن للميت ولد ولا ولد ابن

The quarter [share] is:

1. For the husband with a child,[1485] or [with] a grandchild, [1486] even if lower in descent,
2. For the wife, when the deceased [husband] has no children or grandchildren [from a son].

والثمن للزوجات مع الولد أو ولد الابن

The eighth [share] is for wives with a child,[1487] or a grandchild [from a son].

والثلثان لكل اثنين فصاعدا ممن فرضه النصف إلا الزوج

The two-thirds [share] is for every two or more of those whom a half is their fixed share, except the husband.

والثلث للأم إذا لم يكن للميت ولد، ولا ولد ابن، ولا اثنان من الإخوة والأخوات فصاعدا

The one-third [share] is for the mother, when the deceased has:

1. No child,
2. No grandchild [from a son], or
3. Two or more brothers or sisters.

ويفرض لها في مسألتين ثلث ما بقي – وهما: زوج وأبوان، أو امرأة وأبوان – فلها ثلث ما بقى بعد فرض الزوج أو الزوجة

A third [share] of whatever remains is assigned to her as a fixed share in two cases,[1488] and they are [in the presence of]:

1. A husband and both parents [of the deceased], or
2. A wife and both parents [of the deceased],[1489]

so he has a third of whatever remains after the fixed shares of the husband or wife.[1490]

وهو لكل اثنين فصاعدا من ولد الأم: ذكورهم وإناثهم فيه سواء

It is [also] for every two or more uterine siblings, the males of them and the females of them being equal in that.[1491]

والسدس فرض سبعة: لكل واحد من الأبوين مع الولد أو ولد
الابن، وهو وللأم مع الإخوة، وهو للجدات والجد مع الولد أو ولد
الابن، ولبنات الابن مع البنت، وللأخوات للأب مع الأخت للأب
والأم، وللواحد من ولد الأم

A sixth is the fixed share of seven [persons]:

1. Each of the parents along with a child or a son's child,[1492]
2. The mother along with siblings,[1493]
3. It is for grandmothers [with a child or a grandchild [from a son]],[1494],[1495]
4. The grandfather[1496] with a child or a grandchild [from a son],
5. Daughters of a son (granddaughters) along with a daughter,
6. Sisters from the father along with a full sister, and
7. A single uterine sibling.

Eclipses in Inheritance

وتسقط الجدات بالأم، والجد والإخوة والأخوات بالأب

1. Grandmothers are dropped [from the inheritance] because of [the presence of] the mother,
2. The grandfather, brothers and sisters [are dropped] because of [the presence of] the father.

ويسقط ولد الأم بأحد الأربعة: بالولد، وولد الابن، والأب، والجد

And the uterine sibling is dropped [from the inheritance] because of any one of four [persons]:

1. The child,
2. The grandchild,
3. The father, and
4. The grandfather.

وإذا استكملت البنات الثلثين سقطت بنات الابن؛ إلا أن يكون
بإزائهن أو أسفل منهن ابن ابن فيعصبهن

When the daughters take [their] two-thirds in full, the granddaughters are dropped, unless there is a grandson [from a son] at their level or below them, so he agnatises[1497] them.

و إذا استكمل الأخوات لأب وأم الثلثين سقطت الأخوات لأب، إلا أن يكون معهن أخ لهن فيعصّبهن

When full sisters have taken [their] two-thirds in full, the agnatic sisters are dropped, unless there is with them a brother who agnatises them.

باب العصبات

RESIDUARIES (*'AṢABĀT*)

وأقرب العصبات البنون، ثم بنوهم، ثم الأب، ثم الجد، ثم بنو الأب، وهم الإخوة، ثم بنو الجد، وهم الأعمام، ثم بنو أب الجد

The closest residuaries (*'aṣabāt*) are:

1. The sons, then
2. Their sons, then
3. The father, then
4. The [paternal] grandfather, then
5. The sons of the father, and they are the [agnatic] brothers, then
6. The sons of the grandfather, and they are the paternal uncles, and then
7. The sons of the great-grandfather.[1498]

و إذا استوى بنو أب في درجة فأولاهم من كان من أب وأم

When the sons of the father are level in one class, then the more deserving of them is whoever is from the [same] mother and father.[1499]

والابن وابن الابن والإخوة يقاسمون أخواتهم، للذكر مثل حظ الأنثيين

The son, the grandson [from a son] and the brothers share[1500] with their [respective] sisters [according to]: "*For the male there is the equivalent of the share of two females*."[1501]

ومن عداهم من العصبات ينفرد بالميراث ذكورهم دون إناثهم

Apart from these residuaries, their males alone inherit [and] not their females.[1502]

وإذا لم يكن عصبة من النسب فالعصبة هو المولى المعتق، ثم الأقرب فالأقرب من عصبة المولى

If there is no agnate [residuary] relative, then the residuary is the master who sets free [if the deceased was his freed slave], then the closest, then the next closest from the agnate relatives of the master.

باب الحجب

EXCLUSION FROM INHERITANCE (*ḤAJB*)

وتحجب الأم من الثلث إلى السدس بالولد، أو ولد الابن أو أخوين

The mother is excluded from a third [of the inheritance] [but instead receives] a sixth by [the presence of]:

1. A child,
2. A grandchild [from a son], or
3. Two brothers.

والفاضل عن فرض البنات لبني الابن وأخواتهم، للذكر مثل حظ الأنثيين

The residue from the daughters' fixed share is for the grandsons and their sisters [on the basis of]: "*For the male there is the equivalent of the share of two females*."[1503]

والفاضل عن فرض الأخوات للأب والأم للإخوة والأخوات من الأب للذكر مثل حظ الأنثيين

The residue from the full sisters' fixed share is for the agnatic brothers and sisters [on the basis of]: "*For the male there is the equivalent of the share of two females*."

و إذا ترك بنتا وبنات ابن وبني ابن، فللبنت النصف، والباقي لبني الابن وأخواتهم للذكر مثل حظ الأنثيين

When someone leaves a daughter, and granddaughters by a son and grandsons by a son, then the daughter has a half and the remainder is for the grandsons and their sisters, [on the basis of]: "*For the male there is the equivalent of the share of two females*."

وكذلك الفاضل عن فرض الأخت للأب والأم لبني الأب وبنات الأب للذكر مثل حظ الأنثيين

[And] likewise, the residue from the full sister's share is for the agnatic brothers and sisters [on the basis of]: "*For the male there is the equivalent of the share of two females*."

ومن ترك ابني عم أحدهما أخ لأم فللأخ السدس، والباقي بينهما نصفان

Whoever leaves behind two sons of a paternal uncle, one of whom [also] is a uterine brother,[1504] then the [uterine] brother has a sixth, and the remainder is [shared] between the two of them in two halves.

The Issue of *Mushtarakah*

والمشتركة: أن تترك المرأة زوجا وأما – أو جدة – و إخوة من أم وأخا من أب وأم، فللزوج النصف، وللأم السدس، ولأولاد الأم الثلث، ولا شيء للإخوة للأب والأم

Mushtarakah is that a woman leaves behind a husband and a mother – or a grandmother, [some] uterine brothers and one full brother, then the husband has a half, the mother a sixth, the uterine brothers a third and there is nothing for the full brothers.

باب الرد

REDISTRIBUTION OF RESIDUE (*RADD*)

والفاضل عن فرض ذوي السهام إذا لم يكن عصبة مردود عليهم بقدر سهامهم، إلا على الزوجين

When there are no residuary heirs, the excess after the fixed shares of those who have shares (*dhawū's-sihām*), is redistributed among them according to their shares, except to the spouses.

ولا يرث القاتل من المقتول

The [unintentional or deliberate] homicide does not inherit from the [one whom he] killed.

والكفر ملة واحدة يتوارث به أهله، ولا يرث المسلم الكافر، ولا الكافر المسلم

Disbelief (*kufr*) is one religion;[1505] its people inherit because of it [from one another], but the Muslim does not inherit from the disbeliever nor the disbeliever from the Muslim.

ومال المرتد لورثته من المسلمين، وما اكتسبه في حال ردته فيء

The property of the renegade is for his Muslim heirs. Whatever he had earned during his state of reneging [on Islam] is *fay'*-booty.

و إذا غرق جماعة أو سقط عليهم حائط فلم يعلم من مات منهم أولا فمال كل واحد منهم للأحياء من ورثته

When a group [of people] drown or a wall falls on them,[1506] and it is not known who amongst them died first, then the property of each one of them is for their heirs who are living.[1507]

و إذا اجتمع للمجوسي قرابتان لو تفرقتا في شخصين ورث أحدهما مع الآخر ورث بهما

When two close relationships are united in a Magian, such that if they separated into two [distinct] persons, one of the two would inherit with the other, [the Magian], [in such a case] would inherit from them both.

ولا يرث المجوسي بالأنكحة الفاسدة التي يستحلونها في دينهم

The Magian does not inherit by the invalid marriages which they deem lawful in their religion.[1508]

وعصبة ولد الزنا وولد الملاعنة مولى أمهما

The residuary heirs of the illegitimate child and [of] the child of [a couple who have engaged in] imprecation (*mulā'anah*)[1509] is the master of their mothers.

ومن مات وترك حملا وقف ماله حتى تضع امرأته حملها في قول أبي حنيفة رحمه الله تعالى

Whoever dies and leaves behind an unborn child, his property[1510] remains suspended until his wife delivers her child,[1511] according to the verdict of Abū Ḥanīfah, may Allah have mercy on him.

والجد أولى بالميراث من الإخوة عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى: يقاسمهم، إلا أن تنقصه المقاسمة من الثلث

According to Abū Ḥanīfah, may Allah have mercy on him, the grandfather has more right to the inheritance than the brothers. Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that he shares with them [equally] unless the [act of] sharing reduces [the share] for him to less than a third.

وإذا اجتمعت الجدات فالسدس لأقربهن

When there are grandmothers joined together, then the one [who is] the closest of them has a sixth.

ويحجب الجد أمه

The grandfather excludes his own mother.[1512]

ولا ترث أم أبي الأم بسهم

The mother of the maternal grandfather does not inherit any share.

وكل جدة تحجب أمها

Every grandmother excludes her own mother.

باب ذوي الأرحام

RELATIONS BY THE WOMEN’S SIDE (*DHAWŪ’L-ARḤĀM*)

و إذا لم يكن للميت عصبة ولا ذو سهم ورثه ذوو أرحامه، وهم عشرة: ولد البنت، وولد الأخت، وبنت الأخ، وبنت العم، والخال، والخالة، وأب الأم، والعم لأم، والعمة، وولد الأخ من الأم، ومن أدلى بهم

When the deceased has no agnate residual heirs (*‘aṣabah*) and no [Qur’ānic possessors of] fixed shares (*dhū sahm*), relations by the women’s side (*dhawū’l-arḥām*) inherit him. They are ten:

1. A child of a daughter,
2. A child of a sister,
3. A daughter of a brother,
4. A daughter of a paternal uncle,
5. A maternal uncle,
6. A maternal aunt,
7. A maternal grandfather,
8. A paternal uncle of the mother,
9. A paternal aunt,
10. A child of a uterine brother,

and whoever is connected through them.

فأولاهم من كان من ولد الميت، ثم ولد الأبوين، أو أحدهما، وهم بنات الإخوة وأولاد الأخوات، ثم ولد أبوي أبويه أو أحدهما، وهم الأخوال والخالات والعمات

The most deserving of them is he/she who is:

1. From the children of the deceased, then
2. The children of the parents, or of either of them, and they are daughters of brothers and children of sisters, then

3. Children of both parents of his parents, or of either one of them, and they are maternal uncles, maternal aunts and paternal aunts.

و إذا استوى وارثان في درجة فأولاهم من أدلى بوارث، وأقربهم أولى من أبعدهم

When two [distinct] heirs are level at any stage, then the more deserving of them is the one who is [closer by being] connected through an heir, and the closer of them is more deserving than the further of them.[1513]

وأبو الأم أولى من ولد الأخ والأخت

The maternal grandfather is more deserving than the child of the brother and [the child] of the sister.

والمعتق أحق بالفاضل عن سهم ذوي السهام إذا لم تكن عصبة سواه

The master who sets free is more deserving to the residue of the share of those who have fixed shares when there is no residual heir other than him.[1514]

ومولى الموالاة يرث

The master in the contract of clientage (*mawla'l-mawālāh*) inherits.[1515]

و إذا ترك المعتق أبا مولاه وابن مولاه فماله للابن عندهما، وقال أبو يوسف رحمه الله تعالى: للأب السدس والباقي للابن

When the freed slave leaves behind the father of his master and the son of his master, his property is for the son, according to them.[1516] Abū Yūsuf, may Allah have mercy on him, however, said that the father has a sixth and the son the remainder.

فإن ترك جد مولاه وأخ مولاه فالمال للجد عند أبي حنيفة رحمه الله تعالى، وقال أبو يوسف ومحمد رحمهما الله تعالى: هو بينهما

If [the freed slave] leaves behind [both] the grandfather of his master and the brother of his master, then the property is for the grandfather, according to Abū Ḥanīfah, may Allah have mercy on him, but Abū Yūsuf and Muḥammad, may Allah have mercy on them, said that it is for both of them.

ولا يباع الولاء، ولا يوهب

Clientage (*walā’*) cannot be sold or gifted.

باب حساب الفرائض

CALCULATION OF SHARES (*ḤISĀB AL-FARĀ’IḌ*)

إذا كان في المسألة نصف ونصف، أو نصف وما بقي، فأصلها من اثنين

When, in a case, there is a half and a half, or a half and the remainder, its basis is two.[1517]

وإن كان فيها ثلث وما بقي، أو ثلثان وما بقي فأصلها من ثلاثة

If there is a third in it and the remainder, or two-thirds and the remainder, then its basis is from three.[1518]

وإن كان فيها ربع وما بقي أو ربع ونصف فأصلها من أربعة

If there is a quarter in it and the remainder, or a quarter and a half, then the basis is from four.[1519]

وإن كان فيها ثمن وما بقي، أو ثمن ونصف فأصلها من ثمانية

If there is an eighth in it and the remainder, or an eighth and a half, then the basis is from eight.

وإن كان فيها نصف وثلث أو نصف وسدس فأصلها من ستة

If there is a half and a third in it or a half and a sixth then its basis is from six.

وتعول إلى سبعة وثمانية وتسعة وعشرة

[The basis of decision] may rise to seven, eight, nine and ten.[1520]

وإن كان مع الربع ثلث أو سدس فأصلها من اثني عشر، وتعول إلى ثلاثة عشر وخمسة عشر وسبعة عشر

If there is with the quarter a third or a sixth, then its basis is twelve, and

that may rise to thirteen, fourteen and fifteen.

وإذا كان مع الثمن سدسان أو ثلثان فأصلها من أربعة وعشرين، وتعول إلى سبعة وعشرين، وإذا انقسمت المسألة على الورثة فقد صحت

If there is with the eighth two-sixths or two-thirds, then its basis is twenty-four, and it may rise to twenty-seven. When the issue is [fully] distributed between the heirs then that has worked out correctly.

وإن لم تنقسم سهام فريق منهم عليهم فاضرب عددهم في أصل المسألة وعولها إن كانت عائلة، فما خرج صحت منه المسألة

If the shares of a group of them do not properly divide up, then multiply their number [of sharers] by the basis of the case, and adjust it if it needs to be adjusted. Whatever is produced, the case will work out correctly with that, like:

كامرأة وأخوين: للمرأة الربع سهم، وللأخوين ما بقي ثلاثة أسهم، ولا تنقسم عليهما فاضرب اثنين في أصل المسألة فتكون ثمانية، ومنها تصح المسألة

A wife and two brothers – the wife has a quarter share and the brothers have the remainder: the three-quarters. It does not divide between the two [brothers equally]. You multiply two by the basis[1521] in the case and it becomes eight [shares]. The issue works out correctly with that.[1522]

فإن وافق سهامهم عددهم، فاضرب وفق عددهم في أصل المسألة

If their shares agree with their number, then multiply their highest common factor (*wifq*) with the basis of the case, like:

كامرأة وستة إخوة للمرأة الربع وللإخوة ثلاثة أسهم لا تنقسم عليهم، فاضرب ثلث عددهم في أصل المسألة، ومنها تصح

A wife and six brothers – the wife has a quarter and the brothers have three shares [i.e. the remaining three-quarters] which do not divide [fully] amongst them. You multiply a third of their number by the basis of the case

and from that the case will work out correctly.[1523]

فإن لم تنقسم سهام فريقين أو أكثر، فاضرب أحد الفريقين في الآخر ثم ما اجتمع في الفريق الثالث، ثم ما اجتمع في أصل المسألة

If the shares of two parties or more do not [fully] distribute, multiply [the shares of] one of the two parties by [those of] the other. Then, [multiply] the aggregate with [the shares of] the third party. Then, [multiply] the aggregate with the basis of the case.

فإن تساوت الأعداد أجزأ أحدهما عن الآخر، كامرأتين وأخوين، فاضرب اثنين في أصل المسألة

If the numbers are equal, either of the two will be sufficient for the other, like two wives and two brothers; you multiply two by the basis of the case.[1524]

وإن كان أحد العددين جزءا من الآخر أغنى الأكثر عن الأقل كأربع نسوة وأخوين، إذا ضربت الأربعة أجزأك عن الآخر

If one of the two numbers is a factor of the other, then the larger [number] is sufficient for the smaller, such as four wives and two brothers; when you multiply by the four, it suffices you for the other.[1525]

فإن وافق أحد العددين الآخر ضربت وفق أحدهما في جميع الآخر، ثم ما اجتمع في أصل المسألة، كأربع نسوة وأخت وستة أعمام فالستة توافق الأربعة بالنصف، فاضرب نصف أحدهما في جميع الآخر، ثم ما اجتمع في أصل المسألة، تكون ثمانية وأربعين، ومنها تصح المسألة

When one of two numbers conforms to the other, you multiply the highest common factor of one of the two by the aggregate of the other. Then, [you multiply] the aggregate by the basis of the case, such as four wives, one sister and six paternal uncles; six conforms to four [in being divisible] in half. You multiply half of one of them by the aggregate of the other,[1526] then [you multiply] the aggregate by the basis of the case, it becomes forty-eight,[1527]

and from that the case works out correctly.

فإذا صحت المسألة فاضرب سهام كل وارث في التركة ثم اقسم
ما اجتمع على ما صحت منه الفريضة يخرج حق ذلك الوارث

When the case [works out] correctly, multiply the shares of each heir by the inheritance, then distribute the aggregate on account of whatever share is correct,[1528] and the right of the heir will be produced [in this manner].[1529]

و إذا لم تقسم التركة حتى مات أحد الورثة، فإن كان ما يصيبه من
الميت الأول ينقسم على عدد ورثته فقد صحت المسألتان مما صحت
الأولى، و إن لم تنقسم صحت فريضة الميت الثاني بالطريقة التي
ذكرناها، ثم ضربت إحدى المسألتين في الأخرى و إن لم يكن بين
سهام الميت الثاني وما صحت منه فريضته موافقة

When the inheritance has not been distributed until one of the heirs dies: if whatever he was receiving from the first deceased, divides amongst his heirs, then both cases will work out correctly according to how the first worked out correctly, but if it does not divide, the share of the second deceased will work out correctly according to the manner which we have mentioned.[1530] Then [the share of] one of the two cases will be multiplied by the other, even if there is no common factor between the shares of the second deceased and that according to which the share worked out correctly.[1531]

فإن كانت سهامهم موافقة فاضرب المسألة الثانية في الأولى، فما
اجتمع صحت منه المسألتان، وكل من له شيء من المسألة الأولى
مضروب في ما صحت منه المسألة الثانية، ومن كان له شيء من
المسألة الثانية مضروب في وفق تركة الميت الثاني

If their shares do have a common factor, then multiply [the highest common factor of] the second case by the first. Whatever is aggregated, both cases will work out correctly. Everyone who has something [of inheritance] from the first case, it is multiplied with whatever the second case has worked out correct with, and whoever has something from the second case, it is multiplied with the highest common factor of the inheritance of the second

deceased.[1532]

وإذا صحت مسألة المناسخة، وأردت معرفة ما يصيب كل
واحد من حساب الدراهم قسمت ما صحت منه المسألة على
ثمانية وأربعين، فما خرج أخذت له من سهام كل وارثٍ حبة

When the issue of abolishment (*munāsakhah*) [works out] correctly and you wish to know what each one would receive according to calculation in dirhams, you divide whatever the case was correct on with forty-eight [grains].[1533] Whatever proceeds, you would take that for him as a measure from the shares of each heir.[1534]

APPENDIX ON *ZAKĀH*

TABLE TO SHOW RATES OF *ZAKĀH* IN CAMELS

No. of Camels (Niṣāb)	Amount of Zakāh	No. of Camels (Niṣāb)	Amount of Zakāh
0 — 4	0	125 — 129	1 goat + 2 ḥiqqahs
5 — 9	1 goat (1—yr old)	130 — 134	2 goats + 2 ḥiqqahs
10 — 14	2 goats	135 — 139	3 goats + 2 ḥiqqahs
15 — 19	3 goats	140 — 144	4 goats + 2 ḥiqqahs
20 — 24	4 goats	145 — 149	1 bint makhāḍ + 2 ḥiqqahs
25 — 35	1 bint makhāḍ	150 — 154	3 ḥiqqahs
36 — 45	1 bint labūn	155 — 159	1 goat + 3 ḥiqqahs
46 — 60	1 ḥiqqah	160 — 164	2 goats + 3 ḥiqqahs
61 — 75	1 jadha‘ah	165 — 169	3 goats + 3 ḥiqqahs
76 — 90	2 bint labūns	170 — 174	4 goats + 3 ḥiqqahs
91 — 120	2 ḥiqqahs	175 — 185	1 bint makhāḍ + 3 ḥiqqahs
		186 — 195	1 bint labūn + 3 ḥiqqahs
Thereafter, the obligation is refreshed; thus, for every five camels over 120, there is one goat, and so forth.		196 — 200	4 ḥiqqahs
		200+ This theme will continue as it started from 150 camels onwards.	

TABLE TO SHOW RATES OF *ZAKĀH* IN BOVINES

No. of Cows/Buffaloes (Niṣāb)	Amount of Zakāh
0 — 29	0
30 — 39	1 tabī‘ or tabī‘ah
40 — 59	1 musinn or musinnah
60 — 69	2 tabī‘s or tabī‘ahs
70 — 79	1 musinnah + 1 tabī‘
80 — 89	2 musinnahs
90 — 99	3 tabī‘s
100 — 109	2 tabī‘s + 1 musinnah

It is irrelevant whether the *tabī‘/musinn* is a male or female; the payment of *zakāh* can be made in either.

Note: 1 *tabī‘* is equal to 30 bovines and 1 *musinn* is equal to 40 bovines. This table corresponds to these amounts and eases the calculation of *zakāh* therein.

TABLE TO SHOW RATES OF ZAKĀH IN OVINES (SHEEP AND GOATS)

No. of Goats/Sheep (Niṣāb)	Amount of Zakāh
0 — 39	0
40 — 120	1 goat
121 — 200	2 goats
201 — 399	3 goats
400 — 499	4 goats
500 — 599	5 goats
600 — 699	6 goats
700 — 799	7 goats
800 — 899	8 goats
900 — 999	9 goats
1000 — 1099	10 goats

… and so on (+ 1 goat for every 100 ovines).

GLOSSARY

A

ab	father.
‘abd	slave, bondsman.
‘abd maḥjūr	legally incompetent slave.
ābiq	fugitive slave.
abraṣ	leper.
adab	(pl. *ādāb*) conduct, moral value, etiquette, manners.
‘ādālah	moral uprightness, justice; leg. the condition of being a witness in legal proceedings, esp. in a court of law.
‘ādī	land which is barren from an unknown time.
‘adl	(also *‘ādil*) someone who is morally upright and just, in order to be a legal witness.
āfāqī	someone who is from beyond the *mīqāt*.
ahl al-ḥarb	enemy fighters, combatants, those fighting in war, those from enemy territory *dār al-ḥarb*.
ahl al-khiṭṭah	original and native inhabitants, authorised by the authorities to build and settle in lands conquered by the Muslims.
Ahl al-Kitāb	(sing. *kitābī*, fem. *kitābiyyah*) the People of the Book, referring to the Jews and christians.
‘ajam	non-Arab.
ajīr	(pl. *ujarā’*) someone who contracts to work for wages.
ajīr khāṣṣ	employee; someone who is employed for wages by a specific person or company.
ajīr mushtarak	hireling; someone who works for different people as a self-employed person.
‘ājiz	insolvent, broke, incapable.

ajnabī	(fem. *ajnabiyyah*) foreign, alien; non-*maḥram*, stranger.
akh	brother.
akh li-ab	brother from the same father but different mother, consanguine brother, agnate brother.
akh li-ab wa'l-umm	full brother, brother from both parents, brother- german.
akh li-umm	uterine brother, brother from the same mother but a different father.
amah	(pl. *imā')* female slave, bondmaid.
Amānah	trust.
'amd	deliberation, intention, willfulness; *qatl al-'amd* is willful homicide.
'amm	paternal uncle, father's brother.
'ammah	paternal aunt, father's sister.
āniyah	pot, utensil.
'āqilah	blood-relatives; male agnates of the offender, or *'aṣabah*, who are liable to pay *diyah* to the heirs of the slain in the cases of *qatl al-khaṭa'* and *qatl shibh al-khaṭa'*. They may also be his co-members of the *dīwān* register of fighting men (see also *ma'āqil*).
'aqīq	carnelian.
aqṭa'	amputee.
'arḍ	(pl. *'urūḍ*) goods, merchandise.
'āriyah	commodity loan.
arsh	estimated penalty for injury against the body, amercement.
'aṣabah	(pl. *'aṣabāt*) consanguine member of the family, agnatic relatives; the residuaries in the distribution of inheritance who receive what is left over after those who inherit fixed shares (*farā'iḍ*) have inherited.
aṣl	source, base, root, foundation, principle.
'awl	in inheritance the method of adjustment by

	which fractional shares are allocated.
āyah	verse, sign, miracle.
āyisah	a woman in menopause.
‘ayn	a definite item that is defined by weight, measurement or other method of quantity determination. In a contract, such an item is present and physically accessible by the possessing party; tangible property; cash, i.e. dinars and dirhams, as opposed to credit.
ayyām	(sing. *yawm*) days.
‘azl	coitus interruptus, withdrawal of the penis and ejaculation outside the vaginal cavity.

B

badal	substitute.
badanah	cow or camel.
bā’i‘	seller.
ba‘īd	far, distant, later.
bā’inah	a woman who has been finally divorced with *talāq bā’in*.
ba‘īr	camel, esp. for carrying loads.
bāligh	someone who has attained the age of majority or puberty; a major.
baqar	cows; includes large domesticated bovines such as buffaloes, etc. that are reared for dairy or meat products.
bay‘	sale, exchange, barter, trade.
baynūnah ṣughrā	final divorce resulting from the termination of the *‘iddah* following a *talāq raj‘ī* – a divorce in which the husband has the right to return his wife to him within her *‘iddah* – waiting period.
baynūnah kubrā	irrevocable divorce resulting from the issuance of the third divorcement.
bayt al-māl	treasury.

bī‘ah	synagogue.
bid‘ah	innovation.
biḍā‘ah	merchandise; the submission of property or wealth to another so that the latter may carry on business and submit its profits to the former.
bikr	(pl. *abkār*) virgin.
billawr	crystal.
bint aṣ-ṣulb	proper daughter.
bint labūn	two-year old she-camel; camels that are daughters of a suckling camel and that have begun their third year.
bint makhāḍ	one-year old she-camel; camels that are daughters of a pregnant camel and that have begun their second year.
bulūgh	reaching puberty; attaining the age of majority.

C

D

dahr	time, era.
dalīl	evidence, proof, instruction, direction.
dam	animal sacrificed as atonement.
ḍamān	liability, compensation, guarantee, surety.
ḍamānah	see *kafālah*.
dāniq	a silver coin worth one-sixth of a dirham.
dār al-baghy	rebellious territory.
dār al-ḥarb	enemy territory, hostile land, war zone, hostile non-Muslim state.
dār al-Islām	area under jurisdiction of Islamic governance.
da‘wā	(pl. *da‘āwā*) lawsuit, claim, legal proceedings.

ḍay‘ah	estate, landed property, real estate, productive land, valuable land.
dayn	debt.
dhabḥ	lawful slaughter, performed by cutting the four main vessels: the trachea, the oesophagus and the two jugular veins.
dhabīḥah	slaughtered animal.
dhahab	gold, it derives from the arabic verb “to go”.
dhakāh	slaughter performed according to prescribed conditions.
dhawū’l-arḥām	distant kindred; in inheritance distant kindred esp. uterine relations, those who have not been allotted any share in the Qur’ān and Sunnah.
dhawū’l-qurbā	close relatives, near kindred.
dhimmī	(fem. *dhimmiyyah*) a non-Muslim living under Muslim governance.
dhirā‘	cubit; instrument of measure, usually from the elbow to the tip of the middle finger.
dhū raḥm maḥram	(fem. *dhāt raḥm maḥram*) male relative of the prohibited degree for marriage due to consanguinity, cognate relative.
dhū sahm	(also *dhu’l-farḍ*, pl. *dhawū’l-furūḍ*) allottee, someone who has been allotted a share of inheritance.
dīwān	register of fighting men in particular; archives, records, accounts, office, cabinet.
diyah	(pl. *diyāt*) compensation paid to the victim or to his successors for the loss of limbs or of life; wergild.
diyah mughallaẓah	exorbitant, or enhanced, *diyah*.
diyah mukhaffafah	inexorbitant, or reduced, *diyah*.

E

F

faḥl	male. lit. stallion.
faqīr	needy, poor; someone who owns less than the *niṣāb*.
far‘	branch, shoot, subsidiary, secondary, surplus; also derivative ruling.
faraq	(pl. *afrāq*) thirty-six *riṭls*.
farḍ ‘ayn	universal, or individual, obligation; a definite obligation which each individual Muslim is required to perform.
farḍ kifāyah	communal, or collective, obligation; a definite obligation for the performance of which a sufficient amount of persons are required to respond, such that if some undertake it the rest are absolved of any guilt, but if no one undertakes it all will be guilty of wrongdoing.
farīḍah	(pl. *farā’iḍ*) obligation, divine precept; in the Qur’ān the fixed share of an heir.
farj	external genital organs.
fasād	vitiation; voidness, corruption or irregularity; lacking necessary condition(s).
fāsid	vitiated; void, corrupt, irregular; lacking one or more of the conditions necessary to fully establish an act.
fāsiq	deviant, dissolute, morally wayward, sinner.
faskh	repulsion, rescission, cancellation, abrogation, annulment.
fay’	booty or property captured by Muslims from enemy forces without fighting.
fiḍḍah	silver.
fidyah	ransom; redemption by donation – material or otherwise – due to neglect or omission of a religious requirement.
fiqh	Islamic practical law (in-depth understanding of).

fiṭrah	natural disposition.
fulūs	copper coins, pennies, small change, petty cash.

G

ghanam	sheep and goats; includes small domesticated ovines that are reared for dairy or meat products.
ghānim	conquering fighter in an army.
ghanīmah	spoils, booty.
gharīm	one party to a debt; the debtor, as against the creditor; the creditor, as against the debtor.
ghaṣb	expropriation, usurpation, coercion, extortion, illegal seizure.
ghāṣib	expropriator, usurper; someone who illegally seizes the property of another.
ghāzī	someone who takes part in a military expedition.
ghulām	a boy; also used for a slave.
ghurrah	compensation paid for willful criminal miscarriage or for causing the loss of the foetus.
ghusl	major ritual purification, bathing.

H

ḥadd	(pl. *ḥudūd)* limit, restrictive divine ordinance, divine legal limit, punishment explicitly prescribed by Allah.
hady	offering, sacrificial animal at *ḥajj*.
ḥajb	deprivation, exclusion, esp. of inheritance where the presence of an heir excludes another from inheriting.
ḥajb ḥirmān	total exclusion.

ḥajb nuqṣān	partial exclusion.
ḥajj	pilgrimage to Makkah.
ḥajjām	cupper.
ḥājjī	(also *al-ḥājj*) pilgrim, honorific title of someone who has performed the pilgrimage to Makkah – the *ḥajj*.
ḥajr	interdiction, legal incompetence.
ḥākim	ruler, king, person of legal or political authority; mediator, arbitrator, intercessor, referee, umpire, broker, adjudicator.
ḥalāl	lawful, permitted.
ḥalālah	making lawful; the impermissible legalisation of remarriage after all three divorcements have been exhausted by a legal artifice.
ḥalf	oath.
ḥālif	someone who makes an oath; ally, confederate.
ḥalq	throat, pharynx.
ḥāmil	a pregnant woman; someone who carries baggage, a porter.
ḥaml	foetus, embryo; baggage, luggage.
ḥānūt	shop, store, tavern.
ḥaqīqī	(fem. *ḥaqīqiyyah*) real as opposed to metaphorical; corporeal, physical.
ḥarām	unlawful, forbidden.
al-Ḥaram	the parts of Makkah in immediate proximity to the Ka‘bah and excluding al-Ḥill.
ḥarb	military combat, armed fighting, battle, war.
ḥarbī	enemy combatant, belligerent.
ḥarīm	perimeter; boundary.
ḥarīr	silk.
ḥawālah	transfer of a debt; endorsement.
ḥiqqah	camels ready for riding and carrying loads and that have begun their fourth year.
ḥīlah	stratagem; a method of legalising that which

	is, under normal circumstances, not legal.
al-Ḥill	the outskirts of Makkah not including al-Ḥaram.
ḥīn	appointed time.
ḥinth	to do wrong, to violate, esp. *al-ḥinth fi'l-yamīn* the violation of an oath, perjury, falsely swearing an oath, etc.
ḥiqqah	three-year old she-camel.
ḥirz	a place of protection; a place of safe disposal; sanctuary.
ḥudūd	see *ḥadd*
ḥukmī	(fem. *ḥukmiyyah*) legal.
ḥukm shar'ī	a primary rule of law.
ḥulqūm	windpipe, trachea.
ḥurr	(fem. *ḥurrah*) freeman.

I

i'ārah	lending.
'ibādah	worship, an act of worship.
ibāḥah	permissibility.
ibāq	fugitiveness of a slave.
ibil	camels.
ibn aṣ-ṣulb	proper son.
ibn makhāḍ	one year old he-camel; camels that are male offspring of a pregnant camel and that have begun their second year
'iddah	waiting period before a woman can remarry following divorce or the death of her husband.
'Īd al-Aḍḥā	the Muslim festival which takes place in the month of Dhu'l-hijjah, greater bairam or kurban Bairami.
'Īd al-Fiṭr	the Muslim festival which follows the month of Ramadan, lesser bairam.

iḍṭibā‘	whilst donning the *iḥrām*, to place the top sheet under the right shoulder and over the left shoulder.
iḥdād	mourning of the divorcée or the widow, usually by refraining from adorning herself.
iḥṣān	the quality of being *muḥṣan* (see *muḥṣan*); unblemished reputation, chaste,
iḥyā	to revive, give new life to, to renew.
iḥyā al-mawāt	to revive barren land, cultivation of virgin land.
ījāb	offer; compulsion.
ijārah	hire, lease, rent; letting out on rent.
ijmā‘	the consensus of Muslim jurists (*mujtahids*), within a specific point in time, after the death of the Prophet ﷺ, on a rule of law.
ijtihād	the intense effort exerted by a qualified jurist in the quest to deduce laws from legal sources. In Islam, those agreed-upon legal sources are the Qur’ān, the Sunnah, the consensus of jurists and analogy.
ikrāh	coercion, duress, compulsion, intimidation.
īlā’	vow of continence; vowing voluntary abstention from sexual activity which if it is for a period of four months or more can lead to divorce.
‘illah	underlying cause, ratio decidendi.
imām	someone who leads Muslim prayers.
Imām	leader; Muslim legal scholar of the highest degree, or amongst the elite.
‘innīn	impotent male.
in sha Allāhu ta‘ālā	if Allah, exalted is He, wills.
iqālah	negotiated rescission of a contract, dismissal.
‘iqār	real estate, immovable property, real property, landed property.
iqrār	confession, acknowledgement; acceptance.

irtithāth	linger, survive, delay of death, etc.
istiḥṣān	application of discretion, juristic preference.
istīlād	the act of becoming, or making, an *umm al-walad*.
‘itāq	setting a slave free, emancipation, manumission of a slave or bondmaid.

J

Jabariyyah	a school of thought believing in the inescapable fate of man; fatalism.
jadd	grandfather.
jaddah	grandmother.
jadh‘ah	four-year old she-camel; camels that have entered their fifth year.
jadha‘	goat of six months and over.
jā’ifah	wound that penetrates to the body cavity.
jamrah	(pl. *jimār*) pillar that pilgrims stone during *ḥajj*.
janābah	major ritual impurity requiring *ghusl*.
jāriyah	a girl; a slave-girl, a bondmaid.
jihād	war waged by Muslims according to the rules laid down for it; to struggle, to strive.
jināyah	(pl. *jināyāt*) offence, crime, felony.
jins	genus, type, kind, category, species.
jizyah	capitation on non-Muslims living under Muslim governance.
ju‘l	payment, wages, remuneration; reward.
junub	major ritually impure person requiring a *ghusl*.
jurḥ	wound, injury.

K

	(also known as *ḍamānah*) guaranty, surety;

kafālah	bail.
kafālah bi'l-māl	surety of property or wealth.
kafālah bi'n-nafs	surety of person.
kafīl	someone who is surety, guaranty; a guarantor of payment or performance if another fails to pay or perform.
kāfir	(fem. *kāfirah*) disbeliever; non-Muslim.
kanīsah	church.
kayl	a dry measure for identifying the quantity of commodities that are measured by a three-dimensional object, like wheat, salt, etc.; a dry measure of volume.
khabīth	evil, satanic, lit. foul or malodorous, esp. person.
khāl	maternal uncle, mother's brother.
khālah	maternal aunt, mother's sister.
khalīṭ	associate; someone who has a share in goods.
khalwah	seclusion.
khamr	wine, alcoholic beverage, especially that which is produced from grapes.
kharāj	tax levied on the produce of land owned by *dhimmīs*.
kharājiyyah	accountable by way of *kharāj*.
khārij	outsider; in legal cases where possession of an item is involved, he is the one who is not in possession, as against someone who has possession (*qābiḍ*).
khaṣī	a castrated or emasculated male, castrate.
khaṣm	antagonist, adversary or adverse party, opponent or opposing party in a lawsuit, litigant, contender.
khaṭa'	mistake; *qatl al-khaṭa'* is homicide by negligence or misadventure.
Khaṭṭābiyyah	a sub-sect of the *Rawāfiḍ* (*Shī'ah*) who testify in favour of anyone who swears an oath upon

	his claim.
Khawārij	seceders; a dissident school of thought who rose in insurrection in the time of the first community.
khiyār	choice, option.
khiyār ar-ru'yah	the option of seeing or examining the goods.
khiyār ash-sharṭ	stipulated option of rescinding a contract or sale due to blemish or defect, stipulated right of cancellation.
khul'	divorce at the instance of the wife.
khums	a fifth; the share of war spoils that goes to the leader.
khunthā	hermaphrodite.
khunthā mushkil	an indistinguishable hermaphrodite, one whose biological inclination towards either gender is difficult to establish.
khuṣūmah	lawsuit; argument; dispute.
kināyah	implied, implicit, metonymy, allusion, figurative.
kiswah	clothing, dress.
kitābah	contract between a master and his slave in which the latter buys his freedom.
kitābī	(fem. *kitābiyyah*) scriptural; someone who belongs to the religions of Judaism or Christianity (see also *Ahl al-Kitāb*).
kufr	disbelief, infidelity; lit. covering over [the truth]; ingratitude; rejection.

L

laban al-faḥl	lit. the milk of the man i.e. the man due to whom the woman witnesses milk in her breasts after conception.
labbah	collarbone, clavicle, upper bone of the chest.
laqīṭ	foundling.

li‘ān	imprecation by both parties with regards to the accusation of unlawful sexual intercourse made by the husband against the wife, where the former is unable to produce four witnesses; sworn allegation of adultery against spouse; imprecation.
liṣṣ	thief, robber.
luqṭah	found property.

M

ma‘āqil	(sing. *ma‘qil*, meaning sanctuary). Leg. it refers to those responsible to the victim, or to the victim's heirs, for an offence committed by the offender, usually in the cases involving *diyah* (see also *‘āqilah*).
mabī‘	goods of sale, saleable item(s), commodity, object of sale.
madhy or *madhī*	pre-seminal or pre-ejaculatory fluid, sperma-torrhoea.
ma'dhūn	authorised slave, a slave who has been authorised by his master to carry out specific tasks on the behalf of the latter, such as trade, etc.
maḍrūbah	minted currency; currency in the form of coins.
mafqūd	missing person, someone or something that is lost.
maghṣūb	that which has been expropriated, usurped; seized property.
maghṣūb minhu	the victim of *ghaṣb*, whose property has been usurped.
maḥqūn ad-dam	one whose bloodshed is to be prevented.
mahr	(also *ṣadāq*) dowry, what the groom gives to his bride as a gift on their wedding.
	the customary and reasonable amount of

mahr al-mithl	dowry that a woman of her status would receive.
maḥram	spouse, or relative of the prohibited degree of marriage.
Mahrjān	Persian Autumn Festival.
majbūb	castrate, someone whose genitals have been amputated.
majlis	session, sitting; court of the judge.
makfūl ‘anhu	primary obligee.
makfūl bihī	principal; primary obligor.
makfūl lahū	obligee, for whom the surety is made, creditor.
maktūb ilayhi	addressee, to whom a letter or other postable item is addressed or dispatched.
māl	property, wealth, stock.
mann	a *maund*; one *maund* is equivalent to 815.39 grammes.
maqdhūf	someone who is accused without any substantiation of unlawful sexual intercourse.
maqṭū‘ ‘alayhi	victim of banditry.
ma‘qūd ‘alayhi	item that is the subject of a contract.
mar’	food pipe, oesophagus.
maraḍ al-mawt	terminal illness, final illness, that which is connected to one’s death, when one is on his/her deathbed.
marhūn	the item pledged as security against a loan or debt.
mashhūd ‘alayhi	the person testified against in a legal decision, the one against whom a testimony is made.
mashjūj	victim of *sḥajjah*.
mā ujriya majrā al-khaṭa’	homicide that resembles homicide by negligence or misadventure (also known as *qatl qāi’m al- maqām bi al-khaṭa’* and *qatl shibh al-khaṭa’*).
mawāt	barren, uncultivated or virgin land.

mawhūb	the object of donation, the gift, benefit or favour.
mawhūb lahū	donee, beneficiary, the recipient of a gift.
mawla'l-mawālāh	master in the treaty of amity.
mawla'n-ni'mah	the master who sets a slave free; benefactor.
mawqūf 'alayhi	the beneficiary of the endowment.
maytah	dead body, carrion; meat not slaughtered according to *sharī'ah.*
milk	ownership.
milk yamīn	lawful ownership of slaves.
mi'rāḍ	blunt object.
miskīn	destitute person, someone who owns nothing of property or goods.
mithl	fungible; reasonable; similar; customarily reasonable.
mithl al-qīmah	reasonable price, customary value.
mizmār	a musical instrumental of the woodwind family, like the oboe or flute.
mu'ajjal	postponed, deferred, given time.
mu'ajjal	immediate, prompt, e.g. in the prompt portion of the dowry payment.
mu'ār	subject of *i'ārah*; the commodity that is lent.
Mu'aṭṭilah	a religious sect which denies the attributes of Allah.
mūdā'	bailee; trustee; custodian.
mudabbar	(fem. *mudabbarah*) a slave who is set free at the death of his master.
muḍārabah	trade contract in which the capital provider shares the profits with the trader but the former alone bears the losses (also known as *qirāḍ*), silent partnership, speculative partnership.
muḍārib	trader in a contract of *muḍārabah*.
mudda'ā 'alayhi	defendant, respondent, one against whom a claim or charge is brought in a lawsuit.

mudda‘ī	plaintiff, claimant, appellant, petitioner, the one who initiates a lawsuit.
mudhābanah	throwing the commodity onto the ground, or elsewhere, in order to settle the sale.
mūdi‘	depositor; someone who places something on trust with another; bailer.
muflis	bankrupt, insolvent, someone reduced to surviving on *fulūs* (small change).
muḥābāh	obligingness, nepotism.
muḥakkim	mediator, arbitrator, intercessor, referee, umpire, broker, adjudicator; someone who appoints a *muḥakkim* or *ḥākim*.
muḥāl	creditor.
muḥāl ‘alayhi	someone to whom a debt is endorsed or transferred (esp. *ḥawālah*).
muḥīl	someone transferring a debt; a debtor.
muḥrim	someone who has entered the state of *iḥrām* for *ḥajj* or *‘umrah*, someone who is wearing the *iḥrām*. *muḥṣan* (fem. *muḥṣanah*) married man or someone who has been married and consummated the marriage, someone who is safeguarded from the evils of *zinā* by marriage.
mu‘īr	lender.
mūjir	landlord; lessor; employee; hireling.
mujtahid	a fully qualified and independent jurist (see *ijtihād*).
mukārī	someone who hires animals; donkey-drover, muleteer.
mukātab	(fem. *mukātabah*) a slave who has entered into a contract with his master that he will be set free upon payment of an agreed amount, a slave who buys his freedom from his master.
mukhannath	effeminate.
mukrah	coerced, compelled person.
mukrih	compeller, someone who coerces.

mulā'inah	(masc. *mulā'in*) the woman who makes *li'ān*.
mulāmasah	an unlawful transaction whereby a man can feel a garment but is not allowed to unfold it or examine what is in it, or he buys by night and does not know what is in it.
mulḥam	woven fabric.
mūlī	someone who makes the vow of continence or abstinence from sexual intercourse from his wife.
multaqiṭ	finder of a foundling or of found property.
mu'mar lahū	donee, in a donation granted for life.
munāsakhah	when subsequent heirs to a common inheritance die and the inheritance is not distributed until generations have lapsed.
munfarid	one who performs his prayer on his own and not within a congregation.
muq'ad	disabled.
muqarr lahū	someone in whose favour the confession or the acknowledgement is made.
muqāsamah	(see *qismah*) distribution, partition.
muqirr	someone who confesses or acknowledges.
murābaḥah	re-sale with profit.
murāhiq	(fem. *murāhiqah*) adolescent, teenager, one in his late teens.
murtadd	(fem. *murtaddah*) apostate, renegade; someone who leaves Islam and becomes a disbeliever, having been a Muslim.
murtaddah	see *murtadd.*
murtahin	pledgee, mortgagee, to whom a pledge is made.
mūṣā bihī	that which has been bequeathed or devised, the subject matter of the bequest; bequest.
muṣālaḥ	the party agreeing to the offer of a settlement in a negotiated settlement (*ṣulḥ*).
	someone to whom a bequest is made, devisee,

mūṣā lahū	the beneficiary of a will, legatee.
muṣāliḥ	someone who initiates the negotiation of a settlement.
musāqāh	cropsharing when someone waters or irrigates an orchard or the crops of another for a share of the produce.
mushā‘	common property, shared property, shared tenancy.
Mushabbihah	a school of thought which ascribes human characteristics to Allah, anthropomorphisation of Allah, anthropomorphism.
muṣḥaf	a written copy of the Noble Qur’ān.
mushtarak	common, collective, in which there is more than one partaker; that which is shared between many.
mushtarī	buyer, purchaser.
mūṣī	bequeather, devisor (in the case of real estate), testator, one who makes a will or bequest before he dies.
musinn	(fem. *musinnah*) two-year old male calf.
muslam fīhi	the subject-matter of the contract of *salam*.
muslam ilayhi	the person to whom advance payment is made in a contract of *salam*.
muslim	the one who makes the advance payment in a contract of *salam*; adherent of the *dīn* of Islam, someone who submits peacefully to the will of Allah, exalted is He.
mustaḥāḍah	a menstruating woman.
musta‘īr	borrower.
musta’jir	tenant; lessee; hirer; leaseholder.
musta’min	someone who is given assurance of temporary protection, such as an enemy combatant who enters Muslim lands for any specific non-hostile activity, etc.

mut‘ah	gift of consolation; temporary marriage.
muṭallaqah	divorcée, a woman who has been divorced.
mutaqāsim	allottee in partition, someone at whose instance a partition is made, applicant for partition.
muwakkil	someone who appoints the agent or attorney; the principal in a contract of agency.
muwallā	appointed person, candidate, successor.
muwāthabah	prompt assertion of a claim (esp. in the presence of witness), as in the right of preemption.
muzābanah	the sale of fruit on trees in exchange for picked fruit.
muẓāhir	someone who commits *ẓihār*.
muzakkī	someone who pays *zakāh*; someone who attests to witnesses, someone who declares another to bear the qualities required under the rule of *tazkiyat ash-shuhūd*.
muzāra‘ah	cropsharing (also known as *mukhābarah*, *muḥāqalah* and *qirāḥ*).

N

nabīdh	an infusion of dates and/or raisins. Sometimes alcoholic.
nadhr	vow, pledge.
nafaqah	supply of the means of living, maintenance, expenditure.
nafy	banishment, exile; negation.
naḥr	sacrifice or slaughter performed by stabbing a creature in the jugular vein in the lowest part of the neck (esp. when slaughtering camels).
nā’iḥah	professional, or occupational, mourner; someone who cries in grievous circumstances for wages.

najāsah	impurity, filth.
namā'	growth, expansion, extension, natural increase, increment, multiplication.
naqī'	infusion.
naqīr	a hollowed piece of wood.
nasab	lineage, ancestry, kinship, genealogy; descendants, progeny.
naskh	to repeal, abrogate
nayroz	Persian New Year's Day.
nifās	postnatal bleeding.
nikāḥ	marriage contract; the institution of marriage itself.
nikāḥ fāsid	irregular marriage, invalid marriage where one or more of the conditions of the marriage have not been fulfilled.
niṣāb	minimum amount of property obliging payment of *zakāh*.
nitāj	produce; the act of bearing offspring.
niyyah	intention.
nukūl	refusal to take an oath.
nushūz	discord (marital); violation of marital duties on the part of the husband or the wife.

O

P

Q

qabā'	an outer garment with long sleeves.
qābiḍ	the possessor, esp. of an item in a lawsuit, as against the *khārij*.
qābilah	midwife.

Qadariyyah	a school of thought purporting to believe in man’s freewill to the extent of denying the Divine decree.
qadhf	unsubstantiated accusation of unlawful sexual intercourse.
qādhif	one who, without substantiation, accuses another of unlawful sexual intercourse, one who commits the offence of *qadhf*.
qāḍī	judge, adjudicator.
qafīz	a volumetric measure equal to twelve *ṣā‘s*, Ḥanafī 40.344 litres; others 32.976 litres.
qarḍ	loan, credit.
qarīb	near, close, soon.
qarīb al-bulūgh	adolescent.
qārin	someone performing *ḥajj qirān*.
qasāmah	an oath-taking procedure in order to establish the guilt of the accused; effectively, it is the exact opposite of compurgation.
qāsim	distributor, one who is appointed to distribute allotted shares.
qaṭā’if	small triangular doughnuts fried in melted butter.
qaṭ‘ aṭ-ṭarīq	banditry, brigandage, armed robbery.
qāṭi‘ aṭ-ṭarīq	(pl. *quṭṭā‘ aṭ-ṭarīq*) bandit, brigand, armed robber.
qatl bi’s-sabab	homicide by accidental cause.
qirāḍ	see *muḍārabah.*
qiṣāṣ	legally supervised retaliatory punishment for bodily injury or killing.
qismah	division, distribution.
qitāl	war, battle, military combat, armed fighting.
qiyām	standing posture in prayer.
qubūl	acceptance.
qur’	menstruation.

R

rabb al-māl	owner of the property, of the capital, of the stock.
raḍā‘	fosterage, suckling, breastfeeding.
rāhin	someone who pledges or pawns something as security for a loan.
rahn	pledge, pawn, collateral; security for a debt or loan.
raj‘ah	retraction of divorce.
raj‘iyyah	a woman who has been divorced with *ṭalāq raj‘ī*.
ramal	to walk briskly with a strong intimidating gait esp. during the first three circuits when circumambulating the Ka‘bah.
ramy	pelting of stones esp. at the *jamarāt* during *ḥajj*.
ra’s al-māl	financial capital.
raṣāṣ	lead.
Rawāfiḍ	a school of thought belonging to the *Shī‘ah* sect.
rāwiyah	a large leathern bucket used for drawing water from wells.
ribā	usury.
riddah	apostasy, reneging [on Islam].
riqq	slavery, bondage.
ruḥā	quern, hand mill.
rukhṣah	exemption, concession, allowance.
ruqbā	donation on surviving the other, gift on succession.

S

ṣā‘	a cubic measure of four double handfuls, equivalent to eight *riṭls* according to the Ḥanafī school.

ṣabī	minor; a boy who has not reached the age of majority nor attained puberty.
ṣadaqah	in modern usage a voluntary charity. However, in classical use it means both the obligatory *zakāh* and voluntary acts of giving.
ṣadaqat al-fiṭr	(also *zakāt al-fiṭr*) legally prescribed *ṣadaqah* given at the end of Ramadan.
safātij	(sing. *saftajah*) bills of exchange like money orders, cheques, etc.
safīh	fool, stupid person.
sāḥah	open land; public square; open field.
ṣāḥib al-ḥaqq	in whom rights are vested, the rightful individual.
ṣāḥib al-yad	possessor.
Ṣāḥibān	Imam Abū Yūsuf and Imam Muḥammad, may Allah have mercy on them both.
sahm	share, lot, allotted portion.
ṣaḥīḥ	sound, authentic, valid, complete.
salab	spoils of war from the belongings of one particular fallen enemy combatant.
salam	forward buying; advance payment; when one party in the sale pays in advance to the other party and the other party delays surrendering the item.
salas al-bawl	incontinence of urine.
ṣarf	exchange, currency transactions, exchange of currency or precious metals, such as gold, silver, etc.
ṣarīḥ	express, explicit.
sariqah	theft.
sariyyah	detachment, a small raiding party.
ṣawm	fasting, abstinence from food, drink and conjugal relationships during daylight.
ṣayrafiyyā	money-changer, teller.
shafī‘	preemptor; the executor of preemption.

Shahādah	testimony, certification, evidence, witnessing.
shāhid	witness.
shāhid al-aṣl	(pl. *shuhūd al-aṣl*) original witness, a witness to the actual event in question with regards to the testimony in a legal court.
shāhid al-far'	(pl. *shuhūd al-far'*) the subsidiary witness; a witness to the testimony of a *shāhid al-aṣl*.
shahīd	witness par excellence; martyr.
shājj	someone who wounds someone with a *sḥajjah* wound.
sḥajjah	wound to the head.
sharikah, shirkah	company, partnership.
sharikat al-abdān	see *sharikat aṣ-ṣanā'i'*.
sharikat al-amlāk	partnership in which the parties have a share in a physical item; physical partnership.
sharikat al-amwāl	see *sharikat al-'inān.*
sharikat al-'inān	(also *sharikat al-amwāl)* partnership in which all partners contribute capital and share the profits and losses according to a fixed measure.
sharikat al-mufāwaḍah	partnership in which the partners contribute their belongings and their labour.
sharikat aṣ-ṣanā'i'	(also *sharikat al-abdān*, *at-taqabbul* and *al-a'māl*) partnership in which the partners contribute their labour in return for profits according to a fixed measure.
sharikat al-'uqūd	partnership in which the parties contribute either tangible goods, labour or rights and non-tangible goods; contractual partnership.
sharikat al-wujūh	partnership in which the capital is provided on credit.
sharīk	partner, co-owner; sharer, partaker.
Shaykhān	Imam Abū Ḥanīfah and Imam Abū Yūsuf, may Allah have mercy on them both.
shaykh fānī	enfeebled old man.

shibh al-‘amd	quasi-intentional; *qatl shibh al-‘amd* is quasi-intentional homicide which does not amount to murder but amounts to culpable homicide.
shubhah	doubt, uncertainty, confusion.
shuf‘ah	preemption.
ṣinf	sort, kind, category, type.
sīrah	(pl. *siyar*) conduct, behaviour, manner; biography (esp. of the Prophet Muḥammad ﷺ; military expedition, campaign.
siyar	see *sīrah*.
ṣulḥ	negotiated settlement.
sulṭān	ruler, king, someone in supreme authority.
sunnah mu’akkadah	emphasised, stressed or persistently performed practice of the Prophet Muḥammad ﷺ.
sunnah ghayr mu’akkadah	non-emphasised or irregularly performed practice of the Prophet Muḥammad ﷺ.
Sunnah	that which has been done, recommended or tacitly approved by the Prophet Muḥammad ﷺ.

T

ta‘addī	delict; a civil wrong; tort; a breach of normal precautions.
tabī‘	(fem. *tabī‘ah*) one-year old male calf.
tadbīr	committing to set a slave free after the death of his master.
tafāḍul	excess in weight or measure for the purpose of *ribā*.
taghlīẓ	exorbitance, or enhanced. esp. *diyah*.
taḥāluf	mutual swearing of oaths.
ṭahārah	purity, the process of purifying.
ṭāhir	pure, clean.
tahātur	rebuttal, counter-evidence; confrontation of evidences whereby they cancel each other out

	(*tahātur al-bayyināt*).
taḥlīl	the act or procedure of making *ḥalālah*; releasing oneself from *iḥrām*.
takbīr	the saying of "*Allāhu Akbar*".
taḥrīm	the saying of the consecratory *takbīr*, the initial saying of "*Allāhu Akbar*" whilst raising both hands to the ears, indicating the formal entry into the prayer; prohibition.
takhyīr	being given an option(s).
ṭalāq	divorce.
ṭalāq bā'in	final divorce.
ṭalāq raj'ī	revocable form of divorce, interlocutory decree.
talbiyah	specific repeatedly-pronounced words during *ḥajj*.
Ṭarafān	Imam Abū Ḥanīfah and Imam Muḥammad, may Allah have mercy on them both.
taṣarruf	transaction, disposal, discharge, usufruct, disposition.
ta'ṣīb	see *'aṣabah*.
ṭawāf	circumambulation of the Ka'bah.
tawkīl	the act of appointing an agent, the appointment of a representative.
tawliyah	re-sale without profit, at cost price; appointing a guardian.
tawriyah	dissimulation, when intentions or beliefs are contrary to what one expresses.
tayammum	dry ablution, an alternative purification or substitute for *wuḍū'* and *ghusl*.
ṭaylasān	pallium.
ta'zīr	discretionary punishment; that punishment which is not defined explicitly by the Qur'ān or the Sunnah; legislated punishment.
tazkiyat ash-shuhūd	the process of inquiry that the court employs to ascertain the eligibility and standard of a

	witness, and whether the witness is just or unjust, the attestation of witnesses.
thaman	price, payment, value.
thanī	five-year old camel, two-year old bovine or one-year old ovine.
thayyib	a previously-married woman from a marriage which was consummated.
thiqah	trustworthy.
tola	a unit of weight equal to 180 grains or 0.375 troy ounce (11.7 grams).
ṭuhr	purity; the period of cessation of blood discharge from the vagina between two menstrual bleedings.
ṭunbūr	a lute-like instrument, a musical instrument with a pear-shaped wooden body and a fretted neck, a mandolin.

U

uḍḥiyah	sacrifice, immolation.
ujrah	wages, remuneration, fee; rate; price.
ukht	sister.
ukht li-ab	consanguine sister, agnate sister, sister from the same father but a different mother.
ukht li-ab wa'l-umm	full sister, a sister from both parents, a sister-german.
ukht li-umm	uterine sister, sister from the same mother but a different father.
umm	mother.
umm al-ab	paternal grandmother.
umm al-umm	maternal grandmother.
umm al-walad	(pl. *ummahāt al-awlād*) the slave-woman who is mother of her master's child.
'umrā	donation of the use of something for life.
	visit to the Ka'bah to execute specific rites

‘umrah	that may be performed at any time.
‘uqr	indemnity paid by the master to his slave-woman when he performs unlawful sexual intercourse with her.
‘urūḍ	see *‘arḍ*.
‘ushr	a tenth, taxation paid by Muslims as *zakāh* on the produce of their land property, tithe.
‘ushriyyah	accountable by way of *‘ushr*, that which is or may be reckoned as tithe, tithable.

V

W

wadī	post-urinal fluid.
wadj	jugular vein.
wadī‘ah	deposit; a trust, bailment.
wāhib	donor, benefactor, one who gives a gift.
wājib	incumbent; that act or omission which is proven by non-definitive evidence (if it was definitive, it would be obligatory or *farḍ*).
wakālah	agency, representation.
wakīl	agent, attorney, representative whether legal or otherwise.
walā’	clientage (or contract of) between a freed slave and his former master, amity (or treaty of), succession.
walī	guardian; in cases of homicide, he is the heir entitled to exact retaliation from the offender; governor, ruler, administrative official.
walīmah	wedding banquet.
waqf	endowment; charitable trust.
wāqif	the person who endows a *waqf*.
	(pl. *awsāq*) a cubic measure equal to sixty

wasaq	*ṣā'ṣ*.
waṣī	guardian, trustee; executor; legatee.
waṣiyyah	bequest.
wazan	weight.
wifq	highest common factor (e.g. in 8 and 20, the hcf or *wifq*, is 4).
wilāyah	guardianship, jurisdiction, curatorship, legal power, rule, political authority.
wuḍū'	minor ritual purification, ablution.

X

Y

yamīn	oath.
yamīn ghamūs	false oath.
yamīn laghw	unintentional oath.
yamīn mun'aqidah	enacted oath.
Yawm an-Naḥr	the day of sacrifice.

Z

zād	supplies; luggage; remuneration.
zakāh	mandatory poor-due.
zaman	someone who is chronically ill.
zamān	a period of time.
zānī	(fem. *zāniyah*) someone who has committed unlawful sexual intercourse.
zawāl	noon.
zawj	husband; used for male and female spouse, partner.
zawjah	wife; female spouse.
	the husband's unlawful comparison of his

ẓihār	wife, equating her with the back of his own mother and, thereby, prohibiting intercourse with her.
zinā	unlawful sexual intercourse.
ziqq	(pl. *azqāq*) a unit of measure equal to fifty *maunds* (see *mann*).
zujāj	glass.

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2 *Mishkāt al-Maṣābīḥ*, Book of Leadership; at-Tirmidhī, Vol.1; ad-Dārimī.

3 *Sunan an-Nasā’ī*, Vol.2, Book of Adjudication, Chapter of Ruling in Accordance with the People of Knowledge.

4 There are a number of sayings of the Beloved Messenger of Allah ﷺ that identify this point, e.g. ‘My *ummah* (nation) will not unite on an error’; ‘My *ummah* will not unite on a wrong’; ‘I asked Allah for my *ummah* not to unite on wrong and He gave that to me’; ‘The mercy of Allah ﷻ is with the *jamā‘ah* [the united body of Muslims]’; ‘Whatsoever the Muslims see as good, then it is good with Allah ﷻ’, etc. These narrations are *āḥād* (single chain of narration), but due to their collective reference to the validity of *ijmā‘* , which is proven by *at-tawātur al-ma‘nawī* (the same meanings transmitted by many chains of narration, though the words may differ), they demonstrate a sound belief and solid evidence in favour of *ijmā‘*. [Dr. Hussain Hamid Hassaan, *Uṣūl al-Fiqh* (Arabic), Dār an-Nahdat al-‘Arabiyyah, Cairo: 1970, p.297]

5 The Noble Qur’ān, Sūrat an-Nisā’ (4), Verse 59.

6 Al-Qurṭubī, *al-Jāmi‘ li Aḥkām al-Qur’ān*, in commentary on Sūrat an-Nisā’ 4:59.

7 This work is also known as *al-Mukhtaṣar li’l-Qudūrī* and *al-Mukhtaṣar al-Qudūrī*.

8 According to Ḥijrī calculation.

9 *qidr* means a pot, or cauldron, the plural of which is *qudūr*. Hence, al-Qudūrī refers to someone who either furnishes pots or sells them. [‘Abdulkarīm ibn Muḥammad as-Sam‘ānī, *Kitāb al-Ansāb*.]

10 *Aṣḥāb at-tarjīḥ* are those qualified legal experts who analyse and assess verdicts within a *madhhab*.

1 The three limbs to be washed in *wuḍū’* are: i. the hands and arms up to and including the elbows, ii. the face, and iii. both the feet.

2 They are Imams Abū Ḥanīfah, Abū Yūsuf and Muḥammad ash-Shaybānī, may Allah have mercy upon them all.

3 *Khuffs* are leather socks covering the ankles.

4 These are the passages whence are excreted urine and faeces, i.e. the anus,

excreting faeces and the urethra, excreting urine.

5 A mouthful of vomit is the minimum for the nullification of *wuḍū'*.

6 This includes rainwater, melted snow and melted hail.

7 This includes streamwater, riverwater and water of lakes and large ponds.

8 *Thamar* refers to the fruit of trees such as olives, whereas *fākihah* refers to fruit such as strawberries, melons, etc., i.e. those which are sweet.

9 His hand.

10 Spoiling the water, here, refers to spoiling the purifying nature of the water.

11 Thirty small buckets, twenty large buckets or twenty-five medium sized buckets.

12 Imam Abū Yūsuf and Imam Muḥammad, may Allah have mercy on them.

13 These are the animals the meat of which is *ḥalāl* for human consumption.

14 He may perform either *wuḍū'* or *tayammum* first.

15 *Tayammum* is an alternative to *wuḍū'* and *ghusl*, subject to stipulated conditions.

16 Imam Abū Ḥanīfah and Imam Muḥammad, may Allah have mercy on them.

17 This depends on what original purity the *tayammum* was performed for; if for *wuḍū'*, then all factors that nullify *wuḍū'* would nullify that *tayammum*, but if the *tayammum* is performed as an alternative to *ghusl*, then breaking wind, passing water or answering a call of nature would not nullify that particular *tayammum*, but it would nullify the *tayammum* of *wuḍū'*.

18 If there is sufficient water for *wuḍū'* to be performed with, then the *tayammum* of *wuḍū'* becomes invalid, and if the water is sufficient enough for *ghusl* to be performed by it, then that invalidates the *tayammum* for *ghusl*.

19 That is for twenty-four hours.

20 This is the breadth of the wiping.

21 The legal three days and nights continue from when one first made the intention while resident, for example, if one made the intention of wiping over his *khuffs*, as a resident, at 1pm on Monday, and took up travel before 1pm of the next day, Tuesday he may continue to wipe over the *khuffs* till 1pm on Thursday, when his three days and nights from the formulation of his original intention legally lapse.

22 Imam Abū Yūsuf and Imam Muḥammad. Practically, his period of wiping shall commence when he first invalidates the *wuḍū’*.

23 Includes plasters, bandages and casts.

24 A day and a night is equivalent to the common twenty-four hour day.

25 Any period of purity falling in between the same menstrual bleeding is disregarded.

26 Generally, ten days of menstrual bleeding would be the maximum for any woman, but occasionally, some women experience a period exceeding this maximum on a regular basis. Such regular menstrual bleeding is not *istiḥāḍah*, and it is legally relied upon. The maximum period for such a woman is according to the maximum of what she experiences regularly.

27 This is when she has given birth for the first time and hence, experiences postnatal bleeding for the first time, or she has given birth before but experiences irregular periods of postnatal bleeding.

28 The appearance of the sun on the horizon terminates the time of the *fajr* prayer.

29 The end of the time of the *witr* prayer is the same as the end of the time of the *‘ishā’* prayer, but the *witr* prayer cannot be performed prior to the *‘ishā’* prayer.

30 To delay it as close to sunrise as possible.

31 To delay it past midday.

32 To delay it as close to *maghrib* as possible, without risking the sun changing its colour or its brightness.

33 That is the *taḥajjud* prayer.

34 Besides those prayers there are the *witr*, *tarāwīḥ*, eclipse, funeral prayers, prayer for seeking rain, prayer of fear, etc.

35 i.e. the *mu’adhdhin*, the person who calls the *adhān*.

36 Call for the commencement of prayer congregation.

37 Direction of the Ka‘bah in Makkah.

38 The initial saying of *“Allāhu Akbar”* whilst raising both hands to the ears, indicating the formal entry into the prayer.

39 He does not have to start the prayer again.

40 Up to and including saying the *shahādah*, while seated.

41 This includes incumbent acts and emphasised sunnahs.

42 The words *“Allāhu akbar* – Allah is greater.”

43 By pronouncing the *ta‘awwudh*.

44 Pronouncing any utterance or pronouncement in the prayer silently means that it must not be audible to anyone but to oneself.

45 The first *sūrah* of the Qur’ān.

46 Leader of the prayer in congregation.

47 Silently.

48 Imam Abū Yūsuf and Imam Muḥammad.

49 This is the metatarsal area of the foot.

50 The *taḥrīmah*.

51 One is not required to add a chapter or three verses to the Fātiḥah anywhere other than the first two units.

52 One is not to adopt a particular *sūrah* for any prayer on a regular basis.

53 The length of the long verse must approximate three short verses.

54 This refers to congregational prayer in which the imam is reciting the Fātiḥah and the added *sūrah*, irrespective of whether that is audible or not.

55 An emphasised practice of the Prophet Muḥammad ﷺ

56 Who is ignorant of prayer-related issues.

57 Unlike men, where the imam stands in front of the rows.

58 If the worshippers are naked, then their imam is to stand in between them and not in front of the rows.

59 Indicating as his method of prayer due to a physical disability because of illness or otherwise.

60 i.e. he follows the imamate of the person praying an obligatory prayer although having done that prayer, praying it as an optional prayer.

61 This also includes knuckles, wrists, elbows, knees and all other joints.

62 i.e. stand with arms akimbo.

63 Sitting on the buttocks with the knees up and the thighs touching the chest whilst both hands are on the ground, or sitting on the heels of the feet whilst both hands are on the ground.

64 As long as he has not spoken.

65 Includes bandages, plasters and casts, etc.

66 Or they were someone with a valid excuse and their excuse expired.

67 Someone who observes the sequential order of prayers (*ṣāḥib at-tartīb*) is someone who has missed a maximum of five prayers; he is obliged to discharge the missed prayer prior to the due prayer.

68 The one who observes the sequential order of prayers (*ṣāḥib at-tartīb*) must discharge the missed prayers in the sequence he missed them.

69 Someone who has missed six prayers or more is not required to follow the sequential order; he is not *ṣāḥib at-tartīb*.

70 Once the *adhān* for the *maghrib* prayer has been called, the performance of supererogatory prayers delays the performance of the obligatory prayers, hence the prohibition.

71 These two units are performed prior to the obligatory *fajr* prayer.

72 Repetition of the invalidated supererogatory prayer is incumbent (*wājib*).

73 Imam Abū Yūsuf and Imam Muḥammad.

74 He should omit the sitting posture.

75 Meaning six or more prayers.

76 The obligation of those prayers is waived.

77 Al-A‘rāf 7:206.

78 Ar-Ra‘d 13:15.

79 An-Naḥl 16:50.

80 Al-Isrā’ 17:109.

81 Maryam 19:50.

82 Al-Ḥajj 22:18.

83 Al-Furqān 25:60.

84 An-Naml 27:25.

85 As-Sajdah 32:15.

86 Ṣād 38:24.

87 Fuṣṣilat 41:38.

88 An-Najm 53:62.

89 Al-Inshiqāq 84:21.

90 Al-‘Alaq 96:19.

91 Meaning by sea, ocean, lake, river etc.

92 The obligatory prayers of the *fajr* and *maghrib* prayers do not fall within the category of prayers that can be shortened, due to there being insufficient

units in them to do that, i.e. two and three respectively.

93 Of obligatory prayers.

94 All obligatory prayers of four units are thus prayed as two units only, and adding to those two units is impermissible for the following reasons: it would amount to denial of the shortening of prayer, or fusing the obligatory prayer with the supererogatory prayer (because the additional units are deemed to be supererogatory), omission of the final sitting position in the obligatory prayer, delay in salutation and omission of the *taḥrīmah* of the supererogatory prayer.

95 This is due to the element of uncertainty in the duration of its stay.

96 He is required to follow the imam in that prayer, irrespective of which prayer it is.

97 He is legally classified as a traveller until the elapse of fifteen days of residence.

98 This is due to the fact that he is in two places rather than one. For the ruling of residence to apply, one must take up residence in only one place for fifteen or more days.

99 Two prayers are combined as an act when one prayer is delayed towards the end of its time and the next prayer is brought forward to the beginning of its time, such as the performance of *ẓuhr* prayer near to the end of its time and *‘aṣr* prayer at the beginning of its time.

Prayers may not be combined in one time, such as performing the *ẓuhr* and *‘aṣr* prayers at the time of *ẓuhr*, other than those under special circumstances at ‘Arafah and Muzdalifah (see Chapter of *Ḥajj* – Pilgrimage).

100 Imam Abū Yūsuf and Imam Muḥammad.

101 The original number of units.

102 A *miṣr jāmi‘*, or comprehensive city, is that which has an *amīr* (a ruler or governor), a *qāḍī* (judge) and a *muftī* (someone who informs people of the decisions of the *sharī‘ah*), who enforce and implement the laws of the *sharī‘ah*.

103 The Sulṭān is the supreme authority in the land. This term also denotes the *Khalīfah*.

104 When the time of the *ẓuhr* prayer has passed.

105 Imam Abū Yūsuf and Imam Muḥammad.

106 Some editions of the *Mukhtaṣar al-Qudūrī* say that in the first verdict, Imam Abū Ḥanīfah, may Allah have mercy on him, is alone and Imam Muḥammad and Imam Abū Yūsuf agree on the second verdict. Nevertheless, it is the former that is legally followed.

107 It is valid for them and they are not required to perform the *ẓuhr* prayer.

108 Leading the *Jumu‘ah* prayer.

109 He does not pray four *rak‘ahs of ẓuhr*.

110 He prays the four *rak‘ahs* of the *ẓuhr* prayer instead of the two units of the *Jumu‘ah* prayer.

111 Imam Abū Yūsuf and Imam Muḥammad.

112 Ordinarily the *muṣallā* is a large open space outside the town or city where the Muslims from different mosques assemble. Ed.

113 The *takbīr* in this case is to say: "*Allāhu akbar, Allāhu akbar, lā ilāha illa'llāhu wa'llāhu akbar, Allāhu akbar, wa li'llāhi'l-ḥamd* – Allah is greater, Allah is greater, there is no god but Allah, and Allah is greater, Allah is greater, and to Allah is all praise."

114 Imam Abū Yūsuf and Imam Muḥammad.

115 *Zawāl*: though linguistically it means descent or declination, in Islamic legal terminology it refers to the sun being at its highest point at noon and at its zenith in the meridian just prior to beginning to decline.

116 The eleventh, twelfth and thirteenth days of Dhu'l-Ḥijjah are known as the days of *Tashrīq*.

117 This is the contract entered into by non-Muslim citizens of the Muslim polity for the protection of their persons and properties in exchange for a poll tax (*jizyah*) and taxes (*kharāj*) on their land and trade, instead of the Muslims' religious obligation of *zakāh*. The non-Muslim who enters into such a contract is known as a *dhimmī.*

118 The recommendation is for the congregation of the *tarāwīḥ* and not for the prayer of the *tarāwīḥ* itself, due to the latter being *sunnah mu'akkadah* (emphasised Prophetic practice).

119 *Tarwīḥah*, its real plural in the Arabic language is *tarāwīḥ*, meaning 'to seek or achieve rest'. It refers to the rest that the worshippers take between every four units of prayer during the night prayer in the month of Ramadan.

120 The *tarāwīḥ* prayers are performed in two units with one salutation.

After that, there are two more units with one salutation, and this totals four units. The worshippers then rest by sitting for a while between the ending of the first four units until the beginning of the next four units. Likewise, this goes on until all five *tarwīḥahs* have been accomplished and all twenty units have been performed.

121 The *tarāwīḥ* prayers are to be performed after the *'ishā'* prayers and before the *witr* prayers.

122 When the time for prayer is due.

123 In the event of a battle, siege or other form of immediate danger, which hinders them from performing the prayer without fear of attack.

124 The other group follow the imam in the prayer.

125 They had begun their prayer with the imam (*lāḥiq*).

126 Also to be performed individually.

127 They had joined the prayer later (*masbūq*).

128 To witness that there is no god but Allah, and to witness that Muḥammad ﷺ is His slave and messenger.

129 Althaea includes the hollyhock and the marshmallow.

130 The flat part of the dais where the body is placed.

131 These are seven; the two feet, the two knees, the two hands, the nose and the forehead (considered as one part).

132 The *izār* is a cloth, like the Malay sarong, that wraps around the lower half of the body.

133 The two cloths would be the *izār* and shirt.

134 The use of a brassiere is also permitted.

135 The three cloths are the wrapper for the lower half of the body, the shirt and the wrapper.

136 This refers to the permission granted by the *walī* to conduct the funeral prayer, hence, the prayer cannot be repeated if the *walī* has permitted it to be established and it has been performed.

137 For the funeral prayer, the presence of the body is important. The body begins to decay from the moment of death and by the end of the third day, under normal circumstances, the substance of the body is no more, therefore, there is no funeral prayer after that period. Nevertheless, there is no fixed period in this regard due to the fact that the speed of decay to the body varies

from place to place and from climate to climate.

138 It is not possible for all of the worshippers to be standing facing the chest of the deceased; therefore, the term ‘worshipper’ refers to the imam, or to the one performing the funeral prayer alone.

139 The people do not remain standing until the bier has been lowered by those who are carrying it, directly in front of the body.

140 The grave is the hole that is dug in the ground and the niche is what is dug out of the walls of that grave.

141 The grave is not to be cube-shaped or rectangular.

142 This is what has been reported by at-Tirmidhi, an-Nasā’ī, Ibn Mājah and others. Crying is a sign of life, hence, the funeral rites and prayer for one that cries at birth. If there is no sound made at birth by the baby, it is presumed dead and stillborn unless other signs of life are evident, like movement, etc.

143 Although martyr came to mean someone who passively endured suffering for the sake of their beliefs until the point of death, the original meaning is exactly the same as the root meaning of *shahīd*: a witness, i.e. for the truth.

144 This includes all non-Muslims.

145 This is the area around the Ka‘bah and not inside it.

146 Ownership here refers to possession.

147 The slave who has contracted with his owner to purchase his freedom.

148 By the word *‘ṣadaqah’*, Imam al-Qudūrī, may Allah have mercy on him, is referring to *zakāh*, which is an obligation, and he does not mean that *ṣadaqah* which is optional.

149 The word used is *‘dhawd’* which refers to any number between three and nine.

150 The *shāh* is a sheep or goat and may refer to a ewe or a ram, and is required to be at least one year old.

151 A one-year old she-camel.

152 A two-year old she-camel.

153 A three-year old she-camel.

154 A four-year old she-camel.

155 See the appendix for a table on *zakāh*.

156 This includes the cow, buffalo and other similar large domesticated

quadrupeds that are reared for dairy or meat products.

157 Two and a half percent, or one fortieth.

158 Five percent, or one twentieth.

159 Seven and a half percent.

160 See the appendix for a table on *zakāh*.

161 This includes sheep, goats and other similar small domesticated quadrupeds that are reared for dairy or mainly meat products.

162 See the appendix for a table on *zakāh*.

163 i.e. two and a half percent. Note the *niṣāb* is two hundred dirhams in this context.

164 The horses must be a mixture of mares and stallions; stallions alone or mares alone do not suffice for the obligation of *zakāh*, according to Abū Ḥanīfah, may Allah have mercy on him.

165 The excess is determined according to the value of the animal that is taken. This is the same with the subsequent case.

166 One may pay the value of what is required to be paid in *zakāh*, such as in cash or foodstuffs, etc.

167 This is the *zakāh* collector who is charged with the collection of *zakāh*, etc.

168 For *zakāh* to become payable on sheep and goats, cattle, camels or horses, etc., it is a condition that the animals be grazing (*sā'imah*). If for most of the year, six months or more, the animal is stall-fed by being confined to a feedlot, it does not conform to the definition of a *sā'imah*, and there is no *zakāh* payable on it.

169 This works out to be around 612.36g; each dirham being 3.0618g in weight.

170 This makes the rate two and a half percent of the amount. The *niṣāb* in silver is, therefore, two hundred dirhams worth of silver.

171 They calculate two and a half percent of two hundred dirhams worth of silver or anything totalling over that amount.

172 One *mithqāl* is equivalent to 4.374 grammes. The *niṣāb* in gold is twenty *mithqāls*, which in weight works out to be 87.48 grammes.

173 In the minimum amount of *niṣāb* of gold, which is 87.48g, the *zakāh* payable is 2.187g, and that is two and a half percent of the *niṣāb*.

174 One carat is equal to approximately 219 mg – five percent of the value of one *mithqāl*.

175 This works out to be two and a half percent of the total amount.

176 This means intervals of four *mithqāls* over twenty, as in twenty, being the *niṣāb*, with a payment of half of one *mithqāl* for *zakāh;* then twenty-four being the next interval where two carats are added to the half-*mithqāl* as *zakāh* with twenty-one, twenty-two and twenty-three *mithqāls* being rated according to the interval immediately below them, in this case being twenty, thereafter twenty-eight being the next interval and four carats being added to the half-*mithqāl*, thereafter thirty-two being the next interval, then thirty-six, then forty, and so on.

177 Imam Abū Yūsuf and Imam Muḥammad.

178 As in silver, Imam Abū Yūsuf and Imam Muḥammad, may Allah have mercy on them, calculate two and a half percent from the total amount of gold that is *niṣāb*-level.

179 The year in Islam is calculated according to the lunar cycle and not the solar cycle. The lunar calendar is on average ten days shorter than the solar calendar.

180 This rule is specific for commercial goods where, if the *niṣāb* is reached at the beginning of the lunar *zakāh* year, for example, the twentieth of Ramadan in one year, and it is also reached on the twentieth of Ramadan the following year, then, unlike personal goods, any decline in the value or amount of the goods below the *niṣāb* in between the two dates does not affect the obligation of the payment of *zakāh* which is still due. This, however, is not the case when cash, gold, silver and other forms of wealth subject to *zakāh* decline below the *niṣāb* level during the year; the year is begun again from the day the *niṣāb* is re-achieved.

181 Imams Abū Yūsuf and Muḥammad.

182 According to Abū Ḥanīfah, may Allah have mercy on him, one adds the value of the silver and the gold in order to achieve the *niṣāb*, if they individually do not constitute *niṣāb*. According to Abū Yūsuf and Muḥammad, may Allah have mercy on them, it is not the value that is to be taken into account, but the portions of either element.

183 In this case, and in other issues within this chapter, there is no concept of *niṣāb*, hence, there is no minimum amount of produce to validate *‘ushr*; it

is payable irrespective of amount.

184 This includes streams, rivers, canals, springs, wells, etc.

185 This includes rain, snow, sleet, hail, etc.

186 These three products are generally not cultivated, and hence, they are exceptions to the ruling of *zakāh*.

187 The plurals of *wasq* are *awsuq* and *awsāq*, as in the last issue. It is a cubic measure that is calculated according to the load of a camel, and is fixed at sixty *ṣā‘s*.

188 The *ṣā‘* is a cubic measure which is equivalent to the weight of 1028.57 dirhams, or 3261.5 grammes, or eight *riṭls*.

189 Five percent of the produce.

190 That is, the verdict of Abū Ḥanīfah, may Allah have mercy on him, and the verdict of Abū Yūsuf and Muḥammad, may Allah have mercy on them.

191 Meaning camel-loads, each load equivalent to three hundred *maunds*.

192 One *maund* is equivalent to 815.39 grammes.

193 There is no minimum to be achieved before *‘ushr* is charged.

194 The plural of *ziqq* is *azqāq*, and each *ziqq* is equivalent to fifty *maunds*.

195 This is a specific tax imposed on land that is owned by non-Muslims living under Muslim governance (*dhimmīs*).

196 The Imam is the ruler or leader. Ed.

197 The *mukātab* is the slave who has contracted with his owner to purchase his freedom. Ed.

198 Imams Abū Yūsuf and Muḥammad.

199 Meaning all Ḥanafī scholars.

200 The word land refers to a domain ruled by a specific governing body, such as a ruler, sulṭān or governor. In the contemporary sense, we may understand it as an independent country.

201 In the land where the payer of *zakāh* is.

202 The ownership of *niṣāb* is a condition for that day only and there is no precondition of the passing of a year over it.

203 The ‘second dawn’ is *al-fajr aṣ-ṣādiq* ‘true *fajr*’ and that is the whiteness that spreads across the horizon.

204 Fasting because of having divorced a wife by the expressions that denote *ẓihār* divorce then wishing to take her back (See the section in the Chapter of

Ṭalāq – divorce).

205 Effectively, this constitutes the thirtieth night of Sha'bān, as the date starts at sunset.

206 Agreed upon by al-Bukhārī and Muslim.

207 "Imam" in the works of *fiqh* usually means the leader of the Muslims rather than the imam of the prayer, unless stated specifically. We only capitalise the former. Ed.

208 The new crescent of Ramadan.

209 The collective collaborating reports of a multitude of people generally form sound knowledge and are treated as factual evidence. Such reports are to be accepted by the Imam, i.e. the leader of the Muslims and, thereupon, his decision is based.

210 Nocturnal emission due to a wet dream or otherwise.

211 Being a mouthful or more.

212 The stones of fruits such as cherries, peaches or plums.

213 This is injurious comparison by the husband of his wife to his mother, which makes her unlawful to him (See Chapter of *ẓihār* – Injurious comparison).

214 Vaginal intercourse.

215 Administration of a medicine via the anus.

216 Hypodermic, intramuscular, and intravenous injections do not invalidate the fast.

217 This is due to there being no valid excuse for them to abstain from fasting during their days of good health, if one was ill prior to that, and during their days of residence, if one was travelling prior to that.

218 This is because the commands of the *sharī'ah* only apply to those who possess the required legal capacity (*ahliyyat al-wujūb*) which was absent in both these cases prior to attaining majority and becoming Muslim. The minor and the non-Muslim do not possess legal capacity unless they attain majority or accept Islam, respectively.

219 This is with regards to the menses beginning whilst she is fasting. If, however, she is menstruating before she has begun her fast, she does not fast whilst in that condition.

220 During the last ten days of Ramadan *i'tikāf* is a communal (*kifāyah*)

sunnah mu'akkadah. For days outside of this period it is a recommended (*mustaḥabb*) act.

221 Women may perform *i'tikāf* in the home in their normal location of prayer. If there is no specific location where she offers her prayer, she may specify a spot where she will perform the *i'tikāf*.

222 Imams Abū Yūsuf and Muḥammad.

223 A *maḥram* is a relative with whom marriage is prohibited.

224 *Mawāqīt* is plural for *mīqāt*, meaning 'an appointed time or place'. For the *ḥajj* or *'umrah*, it refers to specific places or limits outside Makkah which the person intending to perform *ḥajj* or *'umrah* is not to cross without entering into *iḥrām*.

225 Pilgrims coming from areas further than those mentioned here use that *mīqāt* which falls in their path, like those coming from Jordan, Egypt, etc. use the *mīqāt* that those of Syria use, which in this case is al-Juḥfah.

226 Al-Ḥill is the opposite of al-Ḥaram and is what is outside of the Ḥaram.

227 At this point, he becomes bound by all stipulations and obligations of *iḥrām*.

228 Wearing perfume is prohibited after one has entered the state of *iḥrām* (at-Tirmidhī, Ibn Mājah).

229 This includes the shaving of the beard and of pubic hair.

230 The garment needs be washed in such a manner that further colour or fragrance do not emit from it.

231 *Althæa officinalis* or marshmallow.

232 Also, whenever he awakes, before he sleeps, after performing *wuḍū'*, etc. In short, one should endeavour to pronounce the *talbiyah* as often as possible.

233 It is also known as *aṭ-ṭawāf al-masnūn* – the circumambulation prescribed by sunnah.

234 The word used – *adhā* – means annoyance, nuisance and harm. Ed.

235 Beginning with his right side that is adjacent to the door of the Ka'bah. This wall is to the right side of the Black Stone, which is from where he initiates the circumambulation.

236 Not inside it, because the *ḥaṭīm* is a part of the Ka'bah itself.

237 *Ramal* is a trotting pace midway between a walk and a run, with a strong

intimidating gait.

238 If kissing the Black Stone is not possible for him, then he may touch it with an object and kiss that. If that is not possible for him, then he may indicate towards it from a distance, with his right hand, and say, "*Allāhu Akbar, lā ilāha illa'llāh – Allāhumma ṣalli 'alā Muḥammad wa 'alā āli Muḥammad* – Allah is greater, there is no god but Allah – O Allah, send blessings upon Muḥammad and upon the family of Muḥammad."

239 The circumambulation of arrival.

240 *Sa'y* means to walk quickly and vigorously; although it can ordinarily mean to run, it does not mean that here. Ed.

241 Going from ṣafā to Marwah is one circuit, and back to ṣafā is another circuit. The odd numbered circuits are from ṣafā to Marwah, and the even numbered circuits are from Marwah to ṣafā, and the final (seventh) circuit ends at Marwah.

242 This is the seventh of Dhu'l-Ḥijjah.

243 The day of *tarwiyah* is the eighth day of Dhu'l-Ḥijjah.

244 During the *ḥajj*, there are three addresses in total; i. On the seventh of Dhu'l-Ḥijjah, ii. On the ninth of Dhu'l-Ḥijjah, and iii. On the eleventh of Dhu'l-Ḥijjah.

245 Also known as *ṭawāf az-ziyārah* – the circumambulation of visiting.

246 This is when the sun declines from its zenith at midday and when the *ẓuhr* prayer time begins.

247 This is the *al-Mawqif al-A'ẓam* (The Greatest Station).

248 *Wuḍū'* is also permitted, but *ghusl* is better.

249 The tenth of Dhu'l-Ḥijjah has entered.

250 It is said that during the time of the Abbāsī caliph, Harūn ar-Rashīd, this hearth would be lit in the night of the stay at Muzdalifah.

251 Such a person would be required to repeat the prayer.

252 This option is for someone performing the *ḥajj ifrād*. Slaughtering an animal is obligatory for the performer of the *ḥajj qirān* and the *ḥajj tamattu'*.

253 It is also known as *ṭawāf ar-rukn* and *ṭawāf al-ifāḍah*.

254 Tenth, eleventh or twelfth of Dhu'l-Ḥijjah.

255 Abū Yūsuf and Muḥammad.

256 This is the eleventh of Dhu'l-Ḥijjah.

257 Twelfth of Dhu’l-Ḥijjah.

258 Thirteenth of Dhu’l-Ḥijjah.

259 The fourth day, i.e thirteenth of Dhu’l-Ḥijjah.

260 Abū Yūsuf and Muḥammad.

261 It is better to delay the pelting of stones till after midday.

262 It is also known as *ṭawāf al-wadā‘*.

263 This term refers to both camels and cows, unless expressly stated otherwise. Here, the cow has already been mentioned so the camel is meant in this context.

264 Fasting is the alternative to *naḥr*, and that is if one is unable to provide an animal for slaughter.

265 In other words, the option of fasting has been taken away from him and he can now only offer a sacrificial animal as atonement.

266 The person performing *qirān* is called *qārin*.

267 He must make up the *‘umrah* by *qaḍā’* for leaving it.

268 He must complete seven circuits, thus he performs four or more circuits to make up the total.

269 He must give away something as charity.

270 If he covers his head for less than a whole day.

271 This works out as a half *ṣā‘* for each needy person.

272 These issues apply to both the male and the female.

273 Sexual intercourse in the anus is *ḥarām*, but the author includes it here simply in relation to whether it invalidates one’s *ḥajj*.

274 The *‘umrah* is still valid, hence no *qaḍā’*.

275 That is if he intends to keep the surplus of food.

276 The *qirān* is a combination of *ifrād ḥajj* and *‘umrah*, so any violation of it requires atonement double that of *ifrād*, i.e. two animals to be sacrificed in place of one.

277 The *qārin* sends one animal to be sacrificed for each of the *iḥrāms*.

278 Abū Yūsuf and Muḥammad.

279 This applies when they release themselves from the *iḥrām*.

280 Those who have undertaken to slaughter the offering for him.

281 One who is under siege, confinement, restraint or is hindered by an enemy, or is ill and cannot perform such rites is, in the legal meaning of the

term *iḥṣār*, a *muḥṣar*.

282 The standing at ‘Arafah and the circumambulation.

283 The word used is *qurbah*, which refers to closeness to Allah ﷻ, and in this context, it is achieved by sacrificing an animal of a specific category for His pleasure.

284 If one of the participants in a cow or camel decides to keep the meat for himself, then ‘the closeness to Allah’ factor will not apply to the others.

285 *Naḥr* is to slaughter the animal by stabbing into a vein at the base of the neck, whereas *dhabḥ* is done by drawing a sharp knife across the jugular veins and the windpipe.

286 This includes anyone who slaughters the animal.

287 Offer and acceptance are required to take place within the same session, before either of the contracting parties leaves that session. This may also include further meetings between the parties after the offer has been made and prior to the acceptance concluding the sale, or if he wants, he may refuse it.

288 In such cases where the accepting party has been given a specific date upon which, or prior to which, it is required to enter into a formal agreement so that the sale may be concluded, the lapse of that date, or the express refusal prior to that date, renders the session terminated. Where no specific date has been mentioned, the express revocation of the offer by the party making the offer, or the lapse of reasonable time without acceptance, renders the offer revoked.

289 Once the sale has been entered into and both parties have agreed to its terms and conditions, the sale is irrevocable.

290 If a previously undisclosed defect is found in the commodity, or the sale was made without having viewed the commodity and, upon seeing it, it does not appear to match the description made by the seller, then the purchaser has the right to revoke the sale.

291 These are the price and the object of sale.

292 If the objects of sale are present then it is not a condition of the permissibility of the sale that the amount or quantity of those items be known, e.g. A, the seller, says to B, the purchaser, “I have sold this item X in my hand to you in exchange for the cash Y in your hand,” and he indicates both considerations – such a sale transaction is valid.

293 Both parties to the sale must know of the specific price and/or method of payment with respect to the item. An unspecified price would invalidate any sale, e.g. A, the seller, says to B, the purchaser, “I have sold this item X in my hand to you in exchange for whatever its price may be,” – this sale transaction is invalid.

294 Immediate payment is the general case which is always the better method of concluding a sale. A deferred payment is, however, permitted when the period of deferment, or the exact date of payment, is known.

295 If the seller sells an item for ten dinars, it is presumed to be ten dinars of the land in which they are in. The reason for this passage in a classic text such as this is because, even when the only currencies known were gold and silver, different rulers minted coins of different weight and specifications, the metals having differing degrees of purity. Those who say that it is enough to equate paper money and digital currency directly with gold and silver coins then go on to deduce that this approach may be transposed on to modern currencies. Thus they say that if A sells item X to B for ten pounds in the UK, it is presumed that the ten pounds are British pounds sterling. Similarly, if A sells item X to B saying, “I have sold this item X in my hand to you in exchange for ten,” it is assumed that it is in the currency in use in that land.

296 If more than one form of currency is in use in that land, then the sale is invalid, unless one of the currencies is explicitly specified. See the previous note.

297 This may take place when one purchases food according to the volume of a specific pot, or to the weight of a specific rock, which the seller commonly uses in order to measure the commodity, subject to the agreement or knowledge of the purchaser.

298 A dry volumetric measure equal to twelve *ṣā‘s* or 40.344 litres.

299 One may purchase a pile of food, or seeds, at the rate of one *qafīz* for one dirham. This is only permitted, from that pile, if he purchases only one *qafīz*. If he desires to purchase more than one *qafīz*, then he is to nominate each *qafīz* with that rate, for example, he is to say, “Five *qafīzs* for five dirhams,” or “Thirteen *qafīzs* for thirteen dirhams,” but he is not to say, “Thirteen *qafīzs* for one dirham each.”

300 This is due to not knowing the number of sheep and goats in the flock.

301 The buyer pays accordingly at the rate established, e.g. ninety dirhams

for ninety *qafīzs*.

302 e.g. if it is one hundred and ten *qafīzs* he must pay one hundred and ten dirhams.

303 The buyer has the choice whether to take what is available and pay for that amount, or to cancel the sale altogether.

304 The seller is not to reserve for himself any specific amount of unpicked fruit.

305 Although gold and silver coins were ordinarily used, sometimes they were of nonstandard weights and thus had to be weighed. Ed.

306 In the original situation this pertained to exchange of gold or silver coins, for which exchange there are very stringent rules in order to prevent usury. Again, those who equate modern currencies with that original coinage say that it includes currency exchange, the sale of bonds, shares and other non-cash alternatives that hold specific monetary value. Ed.

307 The buyer or seller, or both jointly, may stipulate an option in the sale by which they may rescind the contract, or sale, upon the satisfaction of that particular condition. For example, one may purchase a garment for someone who is not present from another on the condition that if such a garment does not fit the intended person, the buyer has the choice to return it in exchange for a full refund of his payment.

308 Since the sale was not completed, the item, in legal terms, still belongs to the seller. If it is destroyed or sold on to a third party whilst in the possession of the potential buyer, then he is responsible for it and, therefore, must compensate the seller for it.

309 The other party.

310 The option is not a transferable property that can be traded. It is a personal right that is invested in an individual and it expires upon the death of its owner, hence it is not a part of the inheritance.

311 One may sell goods that he may never have seen, such as a gift that one has presented to him via a third person. The seller may communicate with the third person to submit that gift over to Mr. A who has bought it from him. The seller, now, has no option to revoke the sale. Similarly may be the case of buying stocks, shares and other forms of intangible goods, particularly those that are made over the telephone and via the internet, where one does, in reality, never see them, unless such goods are presented to him as hard

copies.

312 In many cases, it is impractical to examine the whole of the goods, and therefore, legally unnecessary.

313 The blind person relies on the senses and functions that he possesses, therefore he may acquire benefit from them effectively in transactions that require their use.

314 The owner of the object of sale may only enact the sale if four ingredients exist: i. the deliberate enactment by the owner, ii. the object of sale in its unaltered state, iii. the seller, upon his terms, and iv. the buyer, upon his terms. In a case as such, the seller is an agent (*wakīl*).

315 This option was vested as a right within that individual; it dies with him and is untransferable.

316 If a minor is rid of his blemishes while he is with the seller until he attains majority age and is then sold to a buyer without such blemishes, if any of those blemishes return while he is with the new master, the latter has no option to return him, due to the slave coming into his ownership unblemished. If, however, any of those blemishes had returned after his attaining majority age whilst he was with the first master (the seller), the buyer now has the option to return him, due to the slave coming into his ownership with blemishes.

317 If the young male slave suffers from halitosis or an unpleasant smell coming from his armpits, it is not considered a defect in him, unless he has an illness due to which such odours occur.

318 As against the last issue, the cloth, barley-mush, or any other commodity for that matter, are not returnable to the seller, even though both parties may agree to the return of that commodity, because the commodity has been altered from its original state by the buyer adding to it.

319 If A purchases good quality cloth from B and stitches it into a suit, then the cloth of the suit begins to tear due to a previously unknown weakness in the cloth, A can recover the loss incurred by him due to the tear from B, but B cannot demand A to submit the stitched cloth back to him.

320 He is also the second seller.

321 When the seller stipulates absolute immunity from responsibility for any defect and every blemish within the object of sale, though he does not indicate, mention or enumerate, any or all of those blemishes, he is not held

responsible for any defects or blemishes that may arise after the execution of the sale.

322 From a roll or pile which contains various qualities of cloth.

323 There is no guarantee as to what the net will catch with regards to fish or other animals or birds in any given throw.

324 This is a competitive form of unlawful transaction whereby the buyer and the seller dispute the price of goods and decide to bid each other out. One of them throws a stone onto the goods in order to settle the sale at the current said price.

325 *Mulāmasah* is a competitive form of unlawful transaction whereby a man can feel a garment but is not allowed to unfold it or examine what is in it, or he buys by night and does not know what is in it. Likewise, *munābadhah* is also an unlawful transaction whereby a man throws his garment to another, and the other throws his garment without either of them making any inspection. Each of them says, "This is for this." These forms of sale are unfair and, therefore, disallowed.

326 Unless the seller, or the buyer for that matter, specifies the cloth of sale. Unspecified sale would not distinguish the intended item from the other item.

327 The transaction is invalid if neither party knows the beginning, end, the dates or even the existence of such special days.

328 Such occurs when the bidder does not intend to purchase but to raise the price.

329 When the price between the seller and the buyer has been fixed and mutually agreed upon, and a third party intervenes and offers a higher price, thereby competing with the original potential buyer.

330 This is when the two are brothers, brother and sister, or even uncle and niece or nephew, etc., both of minor age and consanguineously prohibited to marry one another.

331 It could lead to the contract being a concealed way of taking a loan at interest. Ed.

332 It is so because the payment must have been made with some common currency or by other common considerations, like fungible items, and so the repayment in similar currency or consideration is always possible. The repayment, as far as *iqālah* is concerned, does not require the same coins or the same consideration that was exchanged in the initial contract or

transaction; a similar common *thaman* is sufficient.

333 *Iqālah* may be rendered invalid if the commodity perishes being one that is not common and is not easily replaceable. Any attempt to replace the commodity would involve the risk of undue advantage to either of the parties to the contract, hence, its impact on the *iqālah* itself.

334 With due settlement and subsequent agreement between the parties, *iqālah* is valid when a portion of the commodity itself has perished, like the fruit on a tree which was bought inclusive of all the fruit and such fruit had subsequently perished.

335 A re-sale with profit.

336 A re-sale without profit, at cost price.

337 One that is easily replaceable.

338 One purchases some cloth for ten dirhams. He has it dyed and embroidered, which costs him an additional two dirhams. He may add that extra cost of two dirhams to make it twelve dirhams.

339 The purchaser in the last issue must not say that he 'bought it' for twelve dirhams whereas he had paid only ten dirhams for it. He can, however, say that 'it cost' him twelve dirhams because that is the total expenses that he incurred.

340 When the seller says that he bought the goods for fifty dirhams, whereas he had bought them for forty dirhams, in *murābaḥah* the buyer has one of the two choices mentioned.

341 If the last issue occurs in a *tawliyah* transaction, then the buyer may reduce the amount of excess from the price that is mentioned and pay only the real price, e.g. forty dirhams instead of fifty dirhams, reducing it by ten dirhams.

342 *Murābaḥah* and *tawliyah*.

343 He may purchase the goods with the full price or he may leave the purchase altogether.

344 Movable property.

345 This includes all items that are measured by other means, such as counting, etc.

346 One may make alterations from ten dirhams to eleven dirhams in the price of an item before the buyer has taken possession of the item. Similarly,

the seller may alter the initial method of payment prior to taking possession, for example, in the place of currency, one may ask for payment in labour.

347 The buyer may pay ten dirhams for an item that the seller has on sale for only nine dirhams.

348 i.e. the price paid and the commodity.

349 If the commodity has been increased then the buyer is entitled to all the rights to the increment as he is to the original commodity. Likewise, the seller is bound by the same duties and liabilities with respect to the increment, as he is with respect to the original commodity.

With regards to the reduction in price, the same applies.

If *iqālah* is to be pursued by either party, the increment must also be returned with the original commodity, and likewise, the price that was paid, original or reduced, must be repaid to the buyer.

350 The selling of an item to a buyer in consideration of prompt payment would generally require the payment to be made immediately. If the seller allows the buyer to pay at a later date that is fixed and known, then such is permitted and the payment is deemed legally deferred (*mu'ajjal*). In the case of deferred (*mu'ajjal*) payment, the seller may not demand the payment from the buyer prior to the due date.

351 When a buyer purchases from a seller an item with promise to pay it later, it becomes a deferred debt which must be paid to the seller on a specific date. This, however, is not the case with respect to loans; they may be demanded by their creditors at any time.

352 The prohibited factor in the exchange is the quantitative disparity, and this is *ribā*.

353 Both items must be of the same method of defining quantity, i.e. dry measurement or weight. Both must also be of the same genus, i.e. gold for gold, wheat or wheat, etc.

354 The validity for such an exchange lies in the similarity of genus as well as equality of weight or measurement. The genus must also be the same otherwise the sale is invalid as it amounts to *ribā*. Practically, a sale of this sort would seem pointless as one would merely be swapping the same amount and quality of goods of the same genus with someone else, with no gain, loss or benefit derived from it.

355 Any such mutual excess in quality, quantity or value renders the

transaction forbidden.

356 Two commodities that could be subject to *ribā* cannot be exchanged in a sale if one is inferior to the other in quality. Both items must be of the same value, quality and quantity.

357 *Ribā al-faḍl* involves disparity in the quantity, quality or value of the goods.

358 *Ribā an-nasī'ah* is *ribā* which is subject to the lapse of time, thereby rendering necessary additional payment on borrowed goods, such as lent money, etc.

359 The factors that would render the transaction invalid are non-existent, hence its validity. Only one such factor need be absent; if either the disparity in weight or measure, or the difference in genus are absent that renders the transaction permissible.

360 When one commodity is silver and the other is gold, for instance, both are similar in their method of quantification, and that is weight, but both differ with respect to genus. They may mutually be exchanged; the quantity of one will differ from the other, e.g. two grammes of gold in exchange for twenty grammes of silver is a valid transaction.

361 If the quantitative disparity (*tafāḍul*) in a commodity is prohibited and that commodity is a measured commodity, then it always remains measured, and if it is a commodity that is weighed, then it always remains weighed, and if it is quantified by any other method, then that depends on what the people use as a method of quantification, such as counting, etc.

362 Both commodities exchange hands in the same session without delay.

363 The commodities must be specified and declared, mere taking possession of such commodities is not enough.

364 The meat of cattle is different from the meat of sheep, and the flesh of chicken is different from the flesh of partridge.

365 Whatever excess the master levies on his slave is not *ribā*, as long as the slave is in the ownership of that master.

366 Muslims living in the West are there by contractual agreement (*'ahd*), which it is obligatory to fulfil, and so the West is not *dār al-ḥarb* (enemy territory) and it is not *ḥalāl* to engage in usury. Ed.

367 This refers to the dry measure in volumes, such as wheat, barley, etc.

368 Those items that are measured in lengths, like cloth in yards, metres and cubits, land, etc.

369 *Salam* is permitted in these items when they are sold, or exchanged, by weight, but not when numbered due to the possibility of difference in weight with regards to each bundle, pack, skin, etc.

370 The subject matter of the contract of *salam* needs to be in existence from the time the contract is entered into until the time the duration [of the contract] expires and the object paid for becomes due to be submitted.

371 It cannot be immediate, as this would defeat the purpose of *salam*.

372 The duration of the period before the commodity is to be handed over must be known; the date, day or any other appointed point in future time must be fixed and mutually agreed upon by the parties.

373 The cubit (*dhirā'*) is the measure of the distance from the tips of the fingers to the elbow. Ed.

374 The specification of such modes of identification are only permitted when they are not perishable and, after the termination of the period of *salam*, they remain the same, which is highly unlikely given the lengthy periods of holding the *muslam fīhi*. If these specific methods of measurement conform to common measurements, then they are permissible, otherwise, the common measurements are adhered to.

375 Like wheat, dates or eggs, etc.

376 For example, in the case of eggs, duck eggs or chicken eggs; in the case of dates, varieties of dates.

377 For example, in eggs: large, medium or small, or in terms of wheat, white or red, etc.

378 The place of delivery or fulfilment of the contract.

379 The *dhimmī* is permitted to enter into any contract of *salam*, subject to the conditions which apply to all the citizens of the Muslim polity, and additionally, he may also trade in swine and alcohol which are forbidden for Muslims.

380 That are used as prices such as gold dinars, silver dirhams, gold sovereigns, doubloons, guineas, sterling silver dollars, etc. The prime method of pricing was the usage of gold and silver coinage. Some consider that the same principles apply to paper money and digital currencies.

381 The two things to be bartered must be exchanged like for like even if they differ in terms of quality, e.g. fourteen carats against twenty-four carats, or they differ in terms of form, e.g. a gold ring for a gold necklace.

382 When the parties exchange the commodities, possession must be exchanged before they separate from that session, otherwise the transaction is void and all procedures must be renewed in the event of the parties willing to continue.

383 As against all cases of *ribā al-faḍl*, the difference in the commodities allows for their exchange with excess.

384 This is connected to the previous issue, where both parties taking possession of their respective consideration is a condition.

385 The agreement is based on whatever is to be exchanged. Neither of the parties enjoy a right to alter the method of payment from the agreed method, e.g. both parties agree to exchange a gold coin for ten silver coins. Now, neither of them may alter what they have in their hands before it has been exchanged, e.g. the party paying the gold coin may not purchase some food with it and then exchange the food for the silver coins, and likewise, the other party may not purchase cloth with the silver coins and exchange it for the gold coin; the exchange may only involve the one gold coin against the ten silver coins.

386 Conjecture is allowed in such cases where the genus of both commodities differs, and the condition of immediate possession applies.

387 The ornaments being silver, for example, which has to be sold like for like, weight for weight. Ed.

388 Because the ornamentation must be bought in a manner that strictly avoids usury, this part of the contract can invalidate the whole contract. Ed.

389 If the ornaments cannot be removed without causing damage to them or to the sword itself, then the sale in either of them is void, unless they are sold together as one ornamented sword.

390 As in gold for gold and silver for silver, under certain conditions some transactions are not permitted due to *ribā*, and that rule also applies with respect to these coins which are predominantly gold or silver.

391 He also accepted the view of Abū Ḥanīfah, may Allah have mercy on them.

392 *Fulūs*, singular *fals*, are small copper coins whose value is such that

forty-eight of them equal a dirham. They were used in small transactions for everyday household items. Some confusion arises because *fulūs* is used as a modern term for money per se. Ed.

393 This is because the coins now have no use and, therefore, no value.

394 It is valid to purchase something with a half dirham*'s* worth of copper coins. Imam Muḥammad, may Allah be merciful to him, only regarded transactions in copper coins that involved less than a dirham as being valid. Ed.

395 *Ḥabbah*, literally 'a grain'.

396 The rest of the transaction involves disparity in weight between the two, even though that is only a 'grain'.

397 *Rahn* – pawning – is a contract in which a person pawns some property, i.e. pledges it as security against a loan.

398 The pledgor (*rāhin*) says, "I place property A with you as a pledge against loan x" as the offer, and the pledgee (*murtahin*) replies, "I accept your pledge." This is a valid offer and acceptance and is a binding contract.

399 When both parties have taken possession of the respective consideration, the contract of *rahn* is complete.

400 "Unattached" – there must be nothing intrinsically attached to it, such as the fruit of a tree when only the fruit is pledged.

401 The pledgor now has no choice but to carry out his own responsibility with the loan or debt that is to be satisfied, and the pledgee is responsible for the protection and well-being of the collateral.

402 The pledgee must guarantee what is pawned with him.

403 The collateral is guaranteed for less than its value and less than the amount of the debt.

404 In such a case, the pledgor is free of the debt owed to the pledgee.

405 In this scenario, the perishing of the higher valued collateral will have to be made up to the pledgor according to the difference between them, for example, if the debt is of ten dinars and the collateral is of twelve dinars and the collateral perishes, the pledgee is to repay the pledgor two dinars, and until he pays that amount, it is regarded as a trust with him.

406 This means that someone pledges an item against a debt and that both are of the same genus, for example, one pledges dates against a debt of dates,

or twenty dinars against a debt of twenty dinars. If such collateral perishes with the pledgee, it is a liability against him and such perishing reduces the debt against the pledgor according to the value of the collateral. The differing quality and nature of the collateral and the debt is immaterial.

407 *Al-Jawharat an-Nayrah*, which is a commentary on the text, has وَيَرْجِعُ بِالْجِيَادِ

408 Because he has taken what was due to him and spent it, so there is nothing outstanding for him.

409 Both of the slaves are considered together as one whole pledge with respect to the debt.

410 This is the person who has been appointed as the agent in the respective condition, even if he is the pledgee or someone else.

411 Any attempt by the pledgor to remove the agent will be without effect and such removal deemed legally null and void.

412 If the pledgor does not fulfil his debt to the pledgee, the pledgee may have him arrested, detained and imprisoned until the debt is satisfied.

413 The pledgee is told to return the collateral to its real owner, the pledgor, after the pledgor has repaid his debt to the pledgee.

414 Pawning is a contract and does not transfer ownership from one person to another, therefore the slave remains the property of the pledgor and his emancipation of the slave is effective.

415 If the debtor is unable to furnish the debt and his slave is taken possession of by the creditor as collateral, on the maturity of the settlement of the debt the slave is to work for the pledgee/creditor until the debt is paid off. When the slave returns to the pledgor/debtor after paying off the debt, he may recover the expenses and wages of his work from him.

416 The pledgee is the aggrieved party in this issue, therefore, he is the one whom the third party is to compensate by replacing the perished item.

417 If the pledgor causes damage to the collateral, he must compensate the pledgee according to the extent of the damage, in order to make up for the loss.

418 If the pledgee uses, or misuses, the collateral, and it is thereby damaged, whether accidentally or willfully, the damage done to it reduces the debt accordingly. If the debt is twenty dinars and the collateral incurs a damage of seven dinars, then seven dinars is reduced from the amount of debt owed by the debtor/pledgor.

419 If collateral such as a slave, or livestock or horses, commits an offence against either the pledgor or the pledgee, or against any property that belongs to either of the two, such as when a pledged horse kicks the pledgor and breaks his arm, or a pledged garment is donned by the pledgee and it gives him an itchy rash, etc., then there shall be no indemnity nor any other compensatory act or omission against it.

420 The Arabic word used for increase is *namā'*. It includes all natural extensions and expansions such as the fruit of a tree, the offspring of an animal, or the growth on land, etc.

421 Such as a lamb born to a pawned sheep.

422 Loss of the increment will not raise liability against either party.

423 A, the pledgor, pledges a cow for twenty dinars, but it is only worth fifteen dinars on the day that pledgee, B, takes possession of it. The cow delivers a calf and it itself dies. A wants to free the calf, which is worth fifteen dinars, on the day of its redemption by a, from the pledge and take it for himself. A may free the calf by paying B the fifteen dinars. The remainder, which is five dinars, is waived due to the value of the calf against the cow. B incurs a loss of five dinars, whereas A incurs the loss of the cow. Neither can claim against the other.

424 The pledge was raised against the debt. Any increase in that debt will not allow the pledge to be secured against either of the considerations, that is, against the original collateral and against any increment therein.

425 This refers to his children who are adult and not minor children.

426 The pledgor has deliberately and implicitly taken responsibility for it, knowing that its protection by the pledgee is impossible when the pledgee is not in possession of it.

427 The collateral is the responsibility of whoever has possession of it. If it perishes in the possession of the pledgor when he has borrowed it back from the pledgee, then the former is responsible for all that happens to it such as injury and loss incurred. Its perishing “without anything” refers to the responsibility of the pledgee, who is free from any liability, whereas the pledgor is liable to replace the borrowed collateral. This, however, does not nullify the contract, nor does it absolve either party of anything.

428 The minor is normally deemed to be of mature and rational thought when he attains majority. In this case, when it is noticed that such a minor

does not possess rational thought and that he may be insane, his property and wealth are not surrendered to him, in order to take precautions in case he may wreck it. If the circumstances persist, the property is kept away from him until he reaches twenty-five years of age.

429 The fool, of major age, may free a slave, but the slave is free subject to paying off his own value in labour.

430 Abū Yūsuf and Muḥammad.

431 It is the right of his wife, children and others in his family and household to be maintained by him. Foolishness does not take away their right upon him from them.

432 This is the general rule of all bequests, that they are not to exceed one-third of the property left behind by the deceased.

433 Likewise, if he has dinars and his debt is also in dinars, the judge may settle the debt without his authorisation.

434 If the insolvent confesses to a debt or loan, other than one of those in the case that is pending, then that loan or debt will not be taken into question within this case. It becomes due on him after the decision in the case that is pending and after he has settled those debts.

435 Az-Zubayrī says in *al-Jawharat an-Nayrah,* "…for he only detains him in custody if he is of ample means. As for if he is in straitened circumstances, then he does not detain him in custody." Presumably the case here refers to someone who is able to discharge his debts but reluctant to do so. Ed.

436 This is where he possesses property that he has yet to pay for or a loan that he has yet to settle.

437 This is where he has yet to pay regarding a contract that he has entered into.

438 This refers to the deferred form rather than the immediately payable.

439 The insolvent, when he claims not to own any property, may be detained on account of the preceding cases. Otherwise evidence of his ownership of property must be established.

440 The insolvent may be trading property or goods for someone else, or he may be working for another person which requires travelling and disposing of goods from place to place, etc.

441 The creditors must not demand anything from the insolvent debtor.

442 The dissolute must be safeguarding and utilising his property wisely, otherwise interdiction may be brought against him.

443 In this case, the insolvent possesses goods that belong to another person. That person is like a creditor to the insolvent, and the goods owed to him are the debt.

444 The item must be of value, like an orchard, a dinar, etc., and not something that has no value, like a grain of rice.

445 He is the one who confesses or acknowledges.

446 Two hundreds dirhams, the least amount of silver from which *zakāh* would be taken, is considered to be a large amount of wealth.

447 Ten dirhams are considered to be lots of dirhams.

448 If A says to B, "I owe you thirty dinars except two dinars," A owes B twenty-eight dinars.

449 An example of a little amount is when A says to B, "I owe you ten dinars except two dinars," A owes B eight dinars.

450 An example of A lot is when A says to B, "I owe you ten dinars except eight dinars," A owes B two dinars.

451 When A says to B, "I owe you thirty dinars except thirty dinars," the exception is void and A has acknowledged owing thirty dinars.

452 He does not qualify the hundred. Ed.

453 He does not qualify the hundred. It could mean, for example, "one hundred dirhams" and a garment. Ed.

454 Contrary to the previous case, it is unlikely that someone may owe garments to another in such a large number. With regards to dirhams and dinars, it could be either, but due to the lack of qualification here, the one who acknowledges will be asked to explain his intended meaning. It is quite customary to use numbers unqualifiedly to mean dirhams.

455 A acknowledges that he owes B one hundred dirhams, on the condition that he has a week to pay that to him. The acknowledgement of owing the one hundred dirhams is binding upon A, but the condition of a week to pay B is void.

456 If someone acknowledges that a certain house belongs to someone else (the one in whose favour the acknowledgement is made (*muqarr lahū*)) and that its structure belongs to himself, then the house, together with its

structure, belong to the one in whose favour the acknowledgement is made (*muqarr lahū*), because it is unlikely to find a house divided in such a way.

457 Unlike the preceding issue, such a division is likely.

458 He is required to surrender, on demand, the dates together with the basket to the one in whose favour the acknowledgement is made (*muqarr lahū*).

459 The beginning is one, whatever comes after it is two, three… until ten. The limit, which is mentioned in the statement here, is ten, which is to be dropped. We are left with nine as the highest number before the last one is dropped. Imam Abū Ḥanīfah, may Allah have mercy on him, uses this method in such-like cases.

460 Abū Yūsuf and Muḥammad.

461 If A says that he has a ring that belongs to B, then A gives the complete ring to B, the annulet together with the stone that is affixed to it.

462 This is the terminal illness that leads to someone's death.

463 For example, A is on his deathbed. He acknowledges debts of five hundred dinars, of which three hundred dinars he incurred while in good health. Two hundred dinars were incurred during his final illness, of which one hundred dinars are outstanding bills. The remaining one hundred dinars are from unknown sources. In payment of these debts, the three hundred dinars that were incurred during his good health are given priority, together with the bills due to them being of known sources. The final one hundred dinars will be paid off if and when there remains anything.

464 A divorce of the irrevocable type and at the instance of the wife otherwise she receives her share from the inheritance.

465 If he divorces her only once or twice, and he dies during her period of *'iddah*, she receives her share of the inheritance.

466 The purpose of the receipt of the lesser amount is that giving the woman more than her right of inheritance and thus depriving the other heirs of their fair shares is possible. In order to avoid such injustice, the lesser of the two will be given to the divorcee.

467 If it is possible that a child of such description can biologically be born to him, such as the relevant age of the confessor, etc.

468 One may say that so-and-so is his mother, father, wife, son, daughter or master.

469 When someone claims another to be his brother, or uncle, etc.

470 Irrespective of the closeness or distance of the relationship, the known relative will overshadow the one in whose favour the acknowledgement is made (*muqarr lahū*) with regards to the entitlement to inheritance.

471 In the absence of a known heir to the one acknowledging, the one in whose favour the acknowledgement is made (*muqarr lahū*) will be worthy of the inheritance and become an heir.

472 This refers to all types of smithery, especially the occupation of the blacksmith.

473 This refers to heavy duty milling which requires the use of animals or large amounts of water. With regards to hand-milling, it is acceptable.

474 These three types of work are generally those that can possibly cause damage to the structure of the building. It is, therefore, necessary that when someone intends to carry on any such trades or work in a house or shop, he must mention that to the lessor.

475 Some crops could prove harmful to the land or to adjacent land and crops, therefore it is important that the tenant mentions whatever he is to cultivate in it in order to avoid future disputes.

476 Contrary to the preceding issue, the tenant may stipulate the condition that he is to cultivate whatever he wishes.

477 When the building and the trees have been stripped, the landlord may pay the tenant the value of the same in their current state and he takes ownership of them.

478 If the landlord is happy with the tenant leaving the trees and the buildings as they are and he does not charge or pay the tenant anything with regards to them, the landlord remains the owner of the land and the tenant remains the owner of the buildings or trees thereon.

479 If the lessee does not mention anyone specific to be mounted.

480 This rule applies to all leasable goods that are liable to change due to the different nature and skill of each individual user.

481 The nature of the load with respect to possible harm caused must be the same or less. For example, barley, sesame, corn, etc. resemble wheat when loaded, whereas planks of wood, sacks of potatoes and bags of coins differ.

482 As in the last note, the iron is more harmful to the animal than cotton of

the same weight.

483 An employee held in common means someone who is self-employed and provides his services to a variety of people. Ed.

484 A private employee is someone who is employed by one person. Ed.

485 Abū Yūsuf and Muḥammad.

486 i.e. he lets blood.

487 So long as the owner authorises the surgery.

488 This is the general case, that whatever is destroyed, or even harmed, whilst in his bona fide possession and by his responsible undertaking, he is not liable for any damage caused.

489 If, however, he oversteps the boundaries of caution and causes damage to anything that is in his possession due to the nature of the work, he is liable for it. For example, if while driving a taxi that belongs to someone else and for that owner, he negligently scrapes its body against a wall causing damage to it, he is liable for the damage caused to the taxi.

490 The services of a hired slave are naturally going to be availed of within the home or other domestic environment. The journey consists of further hardship relative to the home, therefore the lessee must state his desire to the lessor of taking the slave on the journey with him.

491 The contract was to load supplies of a specific amount, say, one hundred kg in weight. Along the way, he has eaten, or used up, twenty kg of those supplies. He may purchase more supplies in order to make up the one hundred kg that was stipulated in the contract. He must not, however, exceed this amount.

492 Once the parties have entered into the contract of *ijārah*, the remuneration does not become due merely by virtue of its being established.

493 The employee or hireling stipulated that he wanted to be paid promptly.

494 The employee, hireling or lessor, may be remunerated in one of three ways:

a. When a condition is stipulated that the lessee, or employer, will pay him before the work is done (conditional advance payment),
b. When the employer pays the employee in advance and no such condition is stipulated (unconditional advance payment), or
c. When the benefit from the contract has been achieved by the hiring party.

495 Makkah is used here as an example; this applies to all locations and

distances.

496 The cameleer may demand, separately, the fare for each stage as it is covered.

497 Their services are availed of for a specific purpose, the fulfilment of which is required in its entirety. Hence, the wages are paid after the completion of their work. The exception to this rule is that advance payment may be made a precondition to the fulfilment of the obligation.

498 Until the cooked bread is withdrawn from the oven it is regarded as useless, therefore the withdrawal of the cooked bread from the oven is, in effect, the fulfilment of the contractual obligation.

499 The condition is binding.

500 If he leaves the tailoring until the next day, he is not paid according to the condition stipulated by the hirer. He is paid according to the customary rate (*mithl*) of an average tailor of that area, but the maximum that he may be paid is only half a dirham, even if the customary rate may exceed that, say, three-quarters of a dirham.

501 Abū Yūsuf and Muḥammad.

502 They are the months of renting the house.

503 This is a repetition of the first part of the last issue, without the designation of more than one month.

504 A and B share the ownership of a house. A cannot let his share of the house to anyone except B.

505 Abū Yūsuf and Muḥammad.

506 Or any other milk apart from her own, and this includes powdered milk, since it would be powdered cow, sheep or goat’s milk.

507 It must be borne in mind that stipulations in contracts, of whatever kind, divert the natural course of the contract in the favour of either or both of the parties to the contract. It is a form of customising the contract as and how the parties choose.

508 If the employer, customer or hirer does not specify the condition that the artisan is to work alone, then the artisan may avail of the services of someone else, such as an apprentice, partner or another artisan, in the pursuance of the objective of his job.

509 That is if the tailor differs with the owner of the cloth. The same applies

to the dyer.

510 *Mithl* remuneration is that pay which is paid to the employee, hireling, etc. according to the rate and kind that one would be entitled to if the lease was valid.

511 The preconditioned amount is the maximum that one would be entitled to in this type of transaction or labour.

512 The landlord is entitled to rent from the tenant as soon as the latter takes possession of the house; the fact of possession validates the remuneration.

513 The contract of lease, in cases such as these, self-rescinds, in the favour of the leaseholder and against the interest of the lessor, due to the perishing of the principle factor of benefit from the property.

514 The tenant cannot pay the rent of the shop due to the destruction of his goods which he would have sold in order to accumulate money for the rent. The landlord is therefore deprived of his rent, which, ultimately, renders the lease void.

515 Contrary to the last issue, the landlord becomes bankrupt and he is required to sell off his property in order to settle the debts that are due on him. The court intervenes into this contract of lease and the judge orders the sale of the property, the proceeds of which are advanced towards the settlement of the debts.

516 If the journey is postponed due to unavoidable circumstances, then the lessee is not liable for anything and the rescission of the lease is justifed.

517 If the person hiring out the mount postpones the journey on his own accord and demands rescission of the lease, he is liable to pay to the lessor whatever is due to him.

518 Although the word *wājib* has been used in the original Arabic text, which is ordinarily translated as ‘obligatory’ when in the form *wājibah ‘alayhi* ‘obligatory on’, but when it occurs as *wājibah lahū* it means ‘a right for him’ or ‘his right’. The obligation is not a binding one, so as to compel each and every associate in sold property to file a suit for preemption. The term *wājib* refers to a right, in this context, which the associate enjoys, as far as his interest in the object of the sale is concerned.

519 *Khalīṭ* is derived from the verb meaning to ‘mix’, and indicates someone with whom ownership of property is mixed so that it is not clear where the ownership of one ends and the other begins. This is a degree more than

partnership.

520 The associate may not enjoy a share of ownership but his right of use and derived benefit entitles him to the right of preemption.

521 Neighbours are those whose houses are next to each other's, and the wall between their houses is the same or is connected.

522 The associate eclipses everyone's right of preemption.

523 This is known as *mawāthabah* (prompt assertion of a claim).

524 If the object of sale, for example a house, is still in the possession of the seller, the preemptor is to approach him and call witnesses against him. If it is in the possession of the purchaser, the preemptor approaches him with witnesses. If neither of the two is available then the preemptor approaches the object of sale itself, which is the house, and calls the witnesses there.

525 Once the witnesses have been made, the preemptor is to take the matter to court. If he delays filing the suit, no harm befalls him and his right of preemption is valid.

526 This may also refer to a grove.

527 Here, we understand that though preemption is established in landed property, its consideration against the purchaser must be of value, which is termed *māl* (property, wealth).

528 When the house is presented as dowry by the husband to the wife.

529 When a woman releases herself from marriage by giving her husband the house.

530 When one rents another house in lieu of it.

531 When someone guilty of intentional killing pays it as compensatory payment to the heirs of his victim.

532 Which is paid to him for setting a slave free.

533 When the buyer remains silent on the nature of the transaction due to the property not yet being transferred or denies the sale altogether due to its not taking place, and then the plaintiff and potential preemptor submits some payment for the house to the buyer, the preemptor cannot bring a suit of preemption against the buyer due to his negation or silence; ownership of the property has not lapsed by receiving payment.

534 The acknowledgement would be a positive note in response to the plaintiff's suit.

535 In favour of the preemptor.
536 If, after discovering a blemish in the real estate, or after examining it and it not being according to his standard of choice, the preemptor may return the real estate due to his position as of that of a buyer.
537 The buyer is responsible for any blemish that may appear in the property after the preemption order until its handing over to the preemptor.
538 The preemptor is compelled to summon witnesses to at least one of the three prescribed places in order to qualify for the right of preemption. This initial step settles this right, otherwise, no such right exists.
539 If A, the preemptor, accepts a consideration from B, for example another house, waiving his right of preemption, then files a lawsuit claiming preemption, the lawsuit is rejected and he is ordered to return the consideration to B. Acceptance of the consideration denotes his willingness to drop the right of preemption.
540 Where such a right is vested in the individual only, it is non-transferable and is not inherited. The right of preemption dies with its owner.
541 The preemption is only a right of the associate and not of the buyer. The death of the buyer does not herald the termination of this right, which would be a grave injustice against the associate, who is the preemptor. This right survives as against the buyer and the seller.
542 This is so because he knows of the sale and does nothing to prevent it, rather he is an accomplice in it.
543 The stipulated option to withdraw does not conclude the sale indefinitely, and the seller has a conditional right to return the real estate to himself.
544 There is no contract of sale here which would allow room for the preemption.
545 When A gives B a house and receives from B some property in exchange, stipulating the property as a consideration for the gift of the house in question, such a gift, technically, becomes a sale, therefore, the right of preemption arises for the preemptor. If, however, no consideration is made, then no right of preemption exists.
546 If the original sale was for one hundred dirhams and the seller reduced it to eighty dirhams for the buyer, then after the suit of preemption has been decided in the favour of the preemptor, the preemptor shall only be required

to pay eighty dirhams for the real estate.

547 In contrast to the previous issue, if the seller reduces the price from one hundred dirhams to nothing, the preemptor is required to pay the full price of one hundred dirhams.

548 If the buyer pays one hundred and twenty dirhams instead of the sale price of one hundred dirhams, the preemptor is not required to pay the extra twenty dirhams, but only the original one hundred dirhams.

549 When four people own a house with their respective shares in different percentages: A owns fifty, B twenty-five, twenty and D five. B sells his share of twenty-five percent and the other shareholders file suit for preemption. The judge will award each of the three preemptors one-third of the property and their respective shares of ownership of the property will be disregarded.

550 Because the item of consideration is one that is uncommon, its value is taken into account and the preemptor is required to pay according to that value.

551 One case may be where the preemptor enjoys the right of preemption against both pieces of real estate. The other case is where the buyer has bought the real estate by paying in real estate, now the preemptor may pay according to the value of the real estate that is given in consideration for the real estate in question.

552 The associate in the property had relinquished his right to preemption on the understanding that the real estate was sold for a high price; one that he could not afford. Later, it was disclosed to him that the price of the sale was not that high after all, or the sale may have been at a high price but paid by means that he could afford, say a transfer of rights or part-exchange. After such disclosure, the associate has a right to sue for preemption and his relinquishment of his right to preemption is not taken into account due to its invalidity.

553 In contrast with the previous issue, dinars are money and the associate's relinquishment is also based upon the excess of monetary value.

554 The distance of one cubit between the property of the preemptor and the sold real estate is enough to avoid the suit of preemption, whereas any lesser gap would suffice for the right of preemption.

555 A purchases from B one-tenth of a property. Then, he purchases the other nine-tenths. C, the preemptor, only has a right of preemption in the first

sale of one-tenth and no preemption in the second sale of nine-tenths.

556 Naturally, the buyer would put the bought land to beneficial use. The preemptor may pay the buyer for the value of the building and/or the plants, or he may uproot everything and charge the buyer for it.

557 A calamity does not render the preemption void nor does it over-privilege either party.

558 This is the land surrounding the ruins as well as the land upon which the destroyed building once stood.

559 The fruit on the trees belongs to the preemptor, therefore, any picking of the fruit results in a reduction of the price according to its value.

560 The buyer's stipulation of maintaining innocence on the discovery of a blemish does not hold in the way of the preemptor's right to return the house.

561 There is no change of ownership here nor is there any sale of the property. The shareholders in the property have merely divided the real estate.

562 If the preemptor decides not to file for preemption and the buyer returns the real estate to the seller by the decision of the judge on the account of a no obligation right of return condition or on discovering a blemish, the preemptor, or associate, may not now file for preemption. In this case, there are the following ingredients: the buyer must have bought the house, the preemptor must have relinquished his right of preemption, the buyer must have returned the house to the seller due to a condition or a blemish and such return must have been legally authorised.

563 With regards to this partnership, both partners must agree to carry on business with the conditions that their contributed wealth, its disposal and the debt that accrues therein are equal between the two.

564 These are what the partnership of *sharikat al-mufāwaḍah* is based upon.

565 Each is the agent for the partnership and each stands surety for the other.

566 The exception to this includes personal bills and other forms of personal financial rights and liabilities.

567 Either partner acts as an agent and as a surety for the other, according to what the partnership is based on. A creditor may demand payment from either partner.

568 It is a condition of *mufāwaḍah* that both parties remain equal with

respect to their wealth, its disposal and in their debts throughout the course of the partnership. One partner gaining of that which may be used in the partnership, by means of inheritance or gift renders him of a higher amount of wealth than his partner, thus, it renders the partnership of *mufāwaḍah* void.

569 *Fulūs*, singular *fals*, are small copper coins whose value is such that forty-eight of them equal a dirham They were used in small transactions for everyday household items. Some confusion arises because *fulūs* is used as a modern term for money per se. Ed.

570 Common currency is what *mufāwaḍah* is based upon, like dinars and dirhams and *fulūs*. Other forms of monetary value, like gold nuggets and pieces of silver are also permissible, but only when such valuable items are used commonly by the people. Those who take the judgement that paper currencies are equivalent in value to gold and silver extend the judgement to pounds sterling, dollars, rupees, riyals, euros, etc.

571 This is to ensure equality between them in pursuance of this partnership.

572 Also *Sharikat al-Amwāl*.

573 Each partner acts as the agent for the other, but no partner is liable for the acts or omissions of the other due to the absence of surety-like conditions in *'inān*.

574 Unlike *mufāwaḍah*, where the wealth of either party must be equal, in *'inān*, the amount of contributed shares may differ.

575 It is permitted if A, B and C contribute £50 each towards the business and they agree that A shall take 60% of the profits, B shall take 25% and C shall take 15% of the profits.

576 The partners need not contribute all of their wealth towards the partnership.

577 All of the conditions of *mufāwaḍah* apply to *'inān*, other than those that have been specifically mentioned here.

578 Hence the agency and not surety.

579 For example, A purchases an item for the partnership at the cost of ninety dirhams. There are three partners in the partnership, A, B and C. A may recover sixty dirhams, thirty dirhams from each partner according to their respective shares.

580 The complete destruction of the partnership's property, or if the property of one partner is destroyed before either of the two partners have purchased

anything renders the partnership void. Lack of wealth or property from one or both partners is invalid in limited partnership (*‘inān*).

581 The purchase was made whilst the partnership of *‘inān* was valid. Any act or omission performed in the name of the partnership during its time of validity binds all the partners.

582 For example, when they stipulate that B shall receive a fixed amount of ten dirhams from the profits rather than a proportional share.

583 In which the capital owner shares profit with an agent in trade but bears losses himself alone. It also known as a dormant partnership (See Chapter of *Muḍārabah* – Profit-Sharing Partnership).

584 Also *Sharikat al-Abdān*, partnership in labour.

585 If A and B are partners in tailoring and A manufactures a suit for the client and pays him, the payment is divided between A and B, even though B did not work on it.

586 The profits are enjoyed between the partners according to their shares in the bought commodity.

587 Only the worker is entitled to the remuneration and there is no partnership.

588 The worker is entitled to the remuneration and he shall pay the other for the use of his item or animal.

589 Partnership cannot be inherited.

590 It becomes practically impossible to undertake business in such circumstances, which is why it has been declared invalid.

591 The payment of *zakāh* is a personal obligation and not a part of the partnership.

592 When each of the partners discharges his own *zakāh* as well as that of his partner at the same time, knowing that his partner has already discharged his share of the *zakāh* or not knowing that, the latter of the payers is liable for the payment of the *zakāh* of his partner.

593 Abū Yūsuf and Muḥammad.

594 Also known as *qirāḍ*.

595 “Partnership is only concluded with dirhams, dinars and copper coins (*fulūs*) that are in ready demand, and it is not permitted in anything other than that unless people deal in it, such as gold nuggets and silver; in which case

partnership is valid in them." This can be seen in the Chapter of *Sharikah* – Partnership.

596 Neither can specify an amount of the profit. All profits are divided between them according to their pre-agreed shares.

597 Like the un-marriageable close relative (*dhū raḥm maḥram*) relatives, because these relatives may not be owned as slaves by the owner of the capital and so automatically become free.

598 Such purchases are invalid as far as the contract of profit-sharing trade is concerned. These purchases are not made from the capital but from the working partner's own pocket.

599 He compensates for any loss incurred in the capital.

600 If the capital was worth one hundred dirhams and the working partner buys an un-marriageable close relative (*dhū raḥm maḥram*) of the owner of the capital for that price, and then the slave's price increases to one hundred and twenty dirhams. The working partner is free of his liability for the capital to the owner of the capital.

601 With reference to the previous issue, the slave will work for the owner of the capital to pay off the extra twenty dirhams that his value has increased.

602 The giving away of the capital and the disposal of it is not a condition of liability but rather, it is the profit that is a condition.

603 For example, the working partner (*muḍārib*) may, with prior permission from the owner of the capital, enter into another contract with another working partner (*muḍārib*), as a subcontractor, on the basis of paying him a third of the profits.

604 These shares are formed according to the stipulated conditions that were made in the original contract and the subcontract.

605 This is according to the subcontract.

606 The first working partner (*muḍārib*), i.e. the working partner to the original owner of the capital.

607 *Muḍārabah* is like agency wherein the death of either party dissolves the contract.

608 Knowledge of the deposition is a requirement, just like that of agency, where the agent continues to work in his normal capacity as an agent until informed of his deposition.

609 When the contract of *muḍārabah* is rescinded.

610 This is a condition of the contract itself where the loss is to be incurred by the owner of the capital himself.

611 There is no link between the first and the second contract of *muḍārabah*.

612 The working partner.

613 If the contract of the individual is forbidden for himself, it is also forbidden to appoint an agent for it, as in trade in alcohol and pork, etc.

614 The rights and liabilities of punishments for contraventions of the limits (*ḥudūd*) and retaliatory punishments (*qiṣāṣ*) are individual-based; they cannot be delegated or transferred, hence the impermissibility of the appointment of an agent.

615 The principal must be one who owns a right and enjoys the power of its disposal and due execution in order for him to delegate that authority to the agent, and the rulings are binding upon him.

616 The rulings of agency must be binding upon the principal for him to appoint the agent and authorise him with rights and impose on him duties. The minor and the insane person are thus not allowed to appoint agents due to the absence of the relevant rulings binding them.

617 This concerns financial transactions but, as we shall learn later, other interactions are also included.

618 Agency cannot be imposed upon someone who does not intend to become an agent for the principal.

619 This goes against the general rule, but it does not come without the following condition.

620 The agent enjoys the rights of the principal regarding the agency and its subject. In this case, such rights remain with the principal and they are not delegated to the agent.

621 This is connected to the preceding issue where the agent has paid from his own property. The payment to him from the principal remains due.

622 If the price is more than the value then the agent recovers it from the principal.

623 The agent is liable for the complete price, irrespective of the value.

624 The principal may rescind the agency at any time due to such right vested in him.

625 In all such cases, the principal loses his capacity of overseeing and approving any action or omission by his agent.

626 He is rendered incapacitated with regards to his payment of the *kitābah* dues.

627 If the judge had declared him someone who has moved to enemy territory as an apostate then when he returns, he does not return as an agent. If the judge has not declared him as such then his return to Muslim lands as a Muslim means that he is still qualified as the agent.

628 The purpose of the agency has been lifted by the act of the principal.

629 Male relatives in this issue include their female counterparts, such as mother and daughter, etc.

630 One's dealings with them have the possibility of an interest for either party which may invite public criticism or even the allegation of corruption from any third party, including the principal himself.

631 Abū Yūsuf and Muḥammad.

632 The basis of the difference between the two opinions is where Abū Ḥanīfah, may Allah have mercy on him, relies on the agency being unconditional and Abū Yūsuf and Muḥammad, may Allah have mercy on them, tie it down with conditions.

633 There are two scenarios to this issue:

a. If the valuers, or the experts in such commodities, are unable to ascertain the value of any such commodity, then it is deemed to be one which the people are not accustomed to;
b. If the seller prices it so that it does not correspond to the local price and the valuers do not recognise the attributed price as customary, then it is one that the people are not accustomed to. Agency, therefore, is invalid with regards to such a commodity and such a price, respectively.

634 Abū Yūsuf and Muḥammad.

635 That the debt collector is his agent and that the debtor is bona fide.

636 If it is not in the agent's possession, the debtor may not claim it from him.

637 They are also known as physical surety and financial surety.

638 This refers to life or slavery, depending upon the circumstances, and as the case may be.

639 This is the liability of the one standing surety when he has agreed to be surety against the default of or delinquency of the principal.

640 This is when the surety has fulfilled his obligation of presenting the

principal.

641 Litigation is not possible in the wild, hence the impermissibility.

642 There are two separate surety contracts involved in this issue: i. surety of property, which is for the one thousand coins, and ii. surety of person. Neither is connected to the other, therefore, the settlement of one does not discharge the surety of the other.

643 These cases are individual liabilities and, therefore, punishable on the perpetrator himself.

644 The debtor in this case is the principal, the person who originally owes the debt.

645 The statement or declaration of the person for whom surety is undertaken (debtor) is not of more weight than that of the person who is surety.

646 The creditor, etc.

647 One may not stipulate a condition to free the person standing surety other than the genuine purpose for which the contract of surety was entered into.

648 Payment is price, as against value.

649 The goods are liable to change and destruction, which one can never guarantee.

650 Only a half of the payment is from the primary obligor, and any excess is from himself.

651 He is like the person who stands surety.

652 This is when the liability is transferred to the person to whom responsibility for the debt is transferred (*muḥṭāl ʻalayhi*).

653 This is when one gives credit to another and the creditor decides to receive the debt from a third party in another city, thus relieving himself from the perils of travelling with wealth. Money orders, traveller's cheque, etc., fall within this category.

654 It is derived linguistically from *muṣālaḥah* – negotiating a settlement – which means *musālamah* – conciliation after differing. In the *sharīʻah* it is an expression denoting a contract made between the parties negotiating the settlement in order to prevent quarrels by reaching mutual agreement and is interpreted to apply to contracts governing transactions. Its fundamental

support is making an offer and acceptance. The two subjects of negotiated settlement and its precondition is that over which the settlement is reached should be property or a right for which it is permissible to offer compensation or a substitute for (*Al-Jawharat an-Nayrah*). Ed.

655 This type of negotiated settlement is like a sale, wherein the option of return, the stipulated option of examination, the right of preemption, etc. are applicable, so long as it is determined according to property-for-property transactions.

656 This is because such contracts are based on profit whereas the property remains in the ownership of the original landlord all the time.

657 When A is in possession of an item which is claimed by B, and A makes a settlement with B to continue his possession by paying him one hundred dirhams, but later it is proven that the item belongs to C, A takes the one hundred dirhams back from B.

658 As to what proportion of the house, or what specific part, is his share.

659 This is justifed due to the lack of specific share or portion of the house. The part or portion which the claimant demands may or may not be the part or portion of the rightful owner.

660 *Ḥadd* offences (pl. *ḥudūd*), i.e. punishments for contraventions of the limits, are the rights of Allah alone and no-one is permitted to vest these rights.

661 This is similar to the *kitābah* agreement written with a slave to purchase his freedom.

662 This would render it a sale or the compensation, a fine. Tendencies of usurious dealings are possible.

663 The creditor has waived his right to receive a thousand good quality dirhams and has accepted five hundred inferior dirhams which are adulterated with other metals, and written off the remainder of the five hundred by relinquishing his right to them.

664 When something is due from another and the former allows him to delay payment, it is understood as if the former postponed his own right of receiving that payment.

665 In relation to the last issue, the payment of dinars in exchange for dirhams is not permitted due to its rendering it a usurious transaction.

666 ‘Black’ dirhams are poor quality, adulterated coins. ‘White’ dirhams are

presumably better quality and purer coins. Ed.

667 This renders the settlement a contract based on usury, which is prohibited.

668 The agent.

669 The other partner may demand a quarter of the debt from his partner and the remaining quarter from the debtor. As in the previous issues adjacent to this one, the other partner may resort to the debtor for his complete share of the debt and leave the quarter share from his partner.

670 It is permitted, be it of whatever amount or kind.

671 A inherits from the deceased along with B, C, D and E. The inheritance includes gold, silver and other goods. B, C, D and E want to exclude A from the inheritance and want to negotiate a settlement with him by giving him gold and silver only, thus depriving him of other goods. What they give him in gold and silver must be more than his normal share of gold and silver from the inheritance in order to make up for the value of the other goods which they are depriving him from. Otherwise, this would be rendered a usurious deal.

672 He waives his share of debt upon them.

673 *Hibah* is a contract for which the basic elements of a contract are necessary, and they are the elements of the offer and the subsequent acceptance.

674 He is the donee.

675 He is the donor.

676 Where the session (*majlis*) has changed.

677 When others may claim a share therein, and it has the potential to be divided whilst retaining its benefit, like fruit, crops, etc.

678 i.e. rights of inheritance, of passage, etc.

679 If the gifted item is indivisible, like a slave, a car, etc., then it may be given as a gift.

680 The person who gives the gift gives away only his portion of the shares.

681 Abū Yūsuf and Muḥammad.

682 Like payment or another commodity.

683 Such as when the gift is fruit, and the person given the gift has mixed sugar and other substances with it to make it into jam.

684 When the person given the gift sells it or gives it as a gift to someone else.

685 When one grants a gift to another person such that the person given the gift may occupy, or possess, the gift as long as the latter lives.

686 Also donee.

687 When one acquires ownership of property if he survives the other.

688 *Zakāh* is paid from specific categories of wealth, therefore, *ṣadaqah* is also to be paid from the same category as that of *zakāh*.

689 Someone vows to donate all of his wealth, which is one hundred dirhams. He retains fifty dirhams to spend on himself and on his family. After he has earned more wealth, he donates the amount that he had retained from the original donation, which was fifty dirhams.

690 The analogy of releasing a slave has been used here.

691 He is the beneficiary of the endowment.

692 The beneficiary is not entitled to sell, gift or pledge the property of endowment due to the fact that he does not acquire its ownership.

693 When A endows B the proceeds of his property, and after the death of B, to C, or to the poor and needy forever, etc.

694 When A endows B with the proceeds of his property but does not mention anyone after B, then upon the death of B, the endowment passes to the poor.

695 This includes all bovines, such as oxen and other working animals such as those of the horse family.

696 Abū Yūsuf, may Allah have mercy on him, specifies common property in this issue due to being alone in validating its endowment, whereas the other Imams are completely against the endowment of common property.

697 If some slates fall off the roof of the endowed building, the judge (*ḥākim*) shall, if he feels the need, restore them or put them to beneficial use in the endowed building. He may also sell them and utilise the proceeds thereof for the repairs of the building.

698 He retains building materials and the like for future use.

699 This is when someone separates the building by making a separate path for it.

700 By his verbal expression that he has endowed it howsoever.

701 The usurped item must be returned in its original form. If it has perished and it was of a fungible nature, i.e. easily replaceable due to its common availability, and it was of real nature, i.e. of weight, measure, etc. then the usurper must replace it.

702 This is because it is not possible to replace it.

703 Seizure of landed property, or of property that is not liable to change, does not constitute usurpation (*ghaṣb*).

704 The Imam regards that there is a possibility of usurpation in real estate as well as in movables.

705 In this option, the owner keeps the slaughtered goat and receives compensation from the usurper.

706 The victim of usurpation, if he was the owner, ceases to be the owner.

707 The usurper buys the item from the victim according to its original value prior to the alteration.

708 The usurper has built upon it using bricks, stones, mortar, etc., and it is now non-returnable due to the impossibility of removing it without severe damage being caused. The usurper compensates the victim according to the value of the beam.

709 If, due to eradicating the building and the trees, the land is likely to suffer loss by whatever standards, the owner may pay the usurper the value of the planted trees and of the standing building as if they had been eradicated, and not according to their value as they stand erect on that land.

710 If the slave-woman was worth one hundred dirhams before bearing child and sixty dirhams after childbirth, the usurper compensates the owner with forty dirhams. If the child is worth forty dirhams, the usurper does not compensate for anything due to the value of the child making up for the loss incurred. If, however, the child is worth only ten dirhams, the usurper compensates for any difference, and that, in this case, is thirty dirhams.

711 Such items are of value to a non-Muslim who considers them as lawful.

712 A Muslim has no lawful use for alcohol or pigs, therefore, they have no value, and hence, no compensation is due for their wastage.

713 A deposit is something left on trust with someone or in his safe-keeping. It is also known as a bailment of goods.

714 He is the bailee.

715 Liability for the destruction of, or damage caused to, the deposit is not placed against the keeper (bailee) under normal and reasonable circumstances. Where any such liability is mentioned, it is imposed due to diversion from the general circumstances, like transgression, etc.

716 Household includes all those who live with him in his home, be those of blood or marital ties or of no relationship other than of sharing the same residence, but does not include his minor children, lunatics or those who lack reason and discrimination between right and wrong. The keeper is permitted to protect the deposited item by his household members due to the impossibility of his keeping it in his own possession all the time.

717 If there is nothing restricting the keeper from submitting the deposit to the depositor on his demand and it is damaged or destroyed, the keeper is liable for such damage or destruction.

718 Both share the mixed product according to their respective shares therein.

719 This is when the keeper refuses to acknowledge the contract of deposit.

720 If the deposit is too heavy and burdensome and the passage is hazardous, the keeper is not permitted to travel with it.

721 A places some books as deposit with two persons, B and C. Neither B nor C may take the deposit to themselves as a whole. They may, however, split the books, each of the two taking a half of them.

722 There is no choice in this issue because the deposit, say a cow, is not divisible, and only one of the two may possibly safeguard it at any one time.

723 The wife is a part of the household and she may protect the deposit on behalf of the husband, who is the keeper.

724 Houses, in terms of safety and security, are different. If the house used for the deposit is more secure than the one chosen by the depositor, the keeper is not liable in the case of destruction or damage caused to the deposit.

725 This is a commodity loan.

726 These words are also used for giving a gift, therefore, it is necessary that one makes his intentions clear when lending them out on loan.

727 General rules of trust apply to all loans used in a reasonable manner.

728 As distinct from *i‘ārah, qarḍ* is the use of the item itself which subjects the item to change hands and loss of its possession with regards to the

borrower. This is against the rules of *i‘ārah* where the benefit derived from the borrowed item is achieved and it does not change hands, nor does the borrower lose possession of it.

729 Time, as one of the conditions of the contract of *‘āriyyah*, cannot be overlooked; its breach raises the liability in the favour of the aggrieved party, as against the lender.

730 If the borrower hires a taxi, or any other form of transportation, to transport the item that he has borrowed to and from the premises of the lender, he alone is required to pay the charge for such transportation.

731 The foundling is not to be treated like a slave.

732 This is by virtue of knowing the foundling better than the other claimant, which is stronger than a mere statement.

733 The person who finds the foundling is not a legal guardian and may not marry off his charge. The judge (*ḥākim*) is the legal guardian.

734 The finder is to investigate regarding the owner of the lost property by asking people and by announcing it. He may utilise the facilities of the local police station, public notice boards, newspapers, gazettes, local television, radio stations, internet and any other means of publicising it that he deems fit and reasonable for this purpose.

735 The owner may accept the act of charity and let the finder be.

736 The owner may charge the finder according to the value of the lost property which the latter has given away in charity.

737 The finder may take a goat, cow or camel which has gone astray and is at risk from thieves or predatory animals, and protect it according to the injunctions of this chapter.

738 He leases the camel, for example, to work as a part of a caravan, transporting luggage or people. The income that is generated from such lease is spent on the camel for food, maintenance, etc.

739 i.e. outside the Ḥaram of Makkah and the Ḥaram of Madīnah is known as al-Ḥill. Ed.

740 All positive uses in the favour of the finder are considered benefits in this case. Availing of the strength of the camel in carrying luggage and transporting people, etc. is a benefit within this understanding.

741 This issue explains the legal position of such a person and not the

biological classification.

742 Abū Yūsuf and Muḥammad.

743 If more urine is excreted from either of the two passages, that respective legal position shall be attributed to the hermaphrodite.

744 The noun *khunthā* is masculine and so the hermaphrodite is referred to as ‘he’.

745 In a congregational prayer, the sequence of rows distributed gender-wise is such that men form the front rows, followed by the women. In the case of hermaphrodites joining the congregational prayer, they should form their rows, if there are more than one, behind the rows of the men but in front of the women.

746 Abū Yūsuf and Muḥammad.

747 Abū Yūsuf and Muḥammad.

748 The boy would normally have received four shares, a half of which is two shares. A girl would then have received two shares, a half of which is one share. Thus, the boy receives his normal four shares whereas the hermaphrodite receives three shares, two from the boy’s half and one from the girl’s half.

749 The boy would receive twice as many shares as those of the girl, therefore, six shares would be an ideal denominator. It is, however, difficult to establish the share the hermaphrodite would receive if calculated according to Imam ash-Sha‘bī’s opinion, with regards to Imam Muḥammad’s preferred method of calculation. We, therefore, double the shares to twelve, in case the calculation became complex. From twelve, if we deem the hermaphrodite to be a female, he then receives four shares with the boy receiving eight. If we deem the hermaphrodite to be a male, then he receives six shares with the boy also receiving six shares. We amalgamate both cases and derive the average shares from both cases, which for the boy is seven and for the hermaphrodite five. (If we had used a total of six shares for this calculation, the hermaphrodite would receive two and a half shares and the boy three and a half shares.)

750 With respect to himself, the missing person is considered alive; his wife does not remarry and his property is not inherited, etc. With respect to others, he is considered dead in that he does not receive inheritance from someone deceased and he is not entitled to the proceeds of a will or a bequest.

751 Scholars and jurists of other schools of Islamic jurisprudence have declared fewer years of waiting for the missing husband. Some other Ḥanafī texts also state a significantly lesser waiting period before the missing person is officially pronounced dead. Al-Maydānī, in his commentary on the *Mukhtaṣar al-Qudūrī* called *al-Lubāb fī Sharḥ al-Kitāb*, mentions a period of ninety years, whereas al-Haskafī, in his *ad-Durr al-Mukhtār*, states four years.

752 Those who are alive.

753 When the inheritance is being distributed.

754 From a distance of one and a half days away would be twenty dirhams, and likewise, it is calculated relative to the first issue.

755 If the slave is worth twenty-five dirhams and he runs away to a distance of three days, and is subsequently caught and returned by A, then A is entitled to a reward of a maximum of twenty-four dirhams.

756 If the master had placed the slave as collateral in a contract of pawning with A and he runs away and is subsequently returned, he is returned to the pledgee and the one returning the slave is rewarded by the pledgee. If the value of the slave is more than the loan, the pledgee shall only be liable to pay a maximum of what is according to the amount of the loan. Any surplus, thereof, is against the pledgor.

757 Factors which hinder cultivation include the land being situated in a treacherous location, or surrounded by hostile undergrowth, etc.

758 Imam here is the leader of the Muslims, whether the *khalīfah*, an amīr, a king or sulṭān.

759 This is to ensure the revival of that land and to remove its barrenness. The ownership of barren land is justified by cultivation or revivification. With respect to this topic, and where such cultivation or revivification is non-existent, the Imam may appoint any person for the task.

760 The precincts extend from the centre of the well, similarly to the radius of a circle.

761 With regards to the issues pertaining to an existing well or spring that has been acquired by someone in the wilderness, its precincts belong to the owner of the well or spring. No person is allowed to dig a well within the precincts owned by someone else.

762 These two rivers have been mentioned due to the common

understanding of the people of that locality where the author, i.e. Imam al-Qudūrī, may Allah have mercy on him, lived, otherwise their reference towards any other river or any other large permanent mass of moving water is valid.

763 When any river recedes or changes course and exposes the riverbed where it once flowed.

764 When the receding of the water is temporary.

765 This includes canals, streams, etc.

766 The land, in itself, belongs to another, and the river merely passes through it.

767 Abū Yūsuf and Muḥammad.

768 The jetty is important for access to the river in the case of maintenance, cleaning, blocking, etc.

769 This is out of the jurisdiction of the authority enjoyed by him.

770 The *ma'dhūn* is responsible for his own personal debts, for which he may be sold to the creditors in lieu of them should he fail to settle them, unless his master repays the debts on his behalf.

771 If the master of the *ma'dhūn* revokes the authorisation, the *ma'dhūn* remains authorised until the traders in the market become aware of such revocation or interdiction.

772 The authorisation remains intact with regards to whatever is in the possession of the slave for the purpose of the authorised act or omission.

773 Abū Yūsuf and Muḥammad.

774 This refers to his bondage with his master, and it reflects his value.

775 If the slave is burdened by debts to such an extent that they are more than what he owns and more than he himself, as a slave, is worth, then the master may not take anything from him. The master may only take from his slave what is in surplus to the slave's needs.

776 If the *ma'dhūn* owns a slave, in this case the master of the *ma'dhūn* may not free that slave.

777 Abū Yūsuf and Muḥammad.

778 Surrendering the goods to one's own slave before taking payment from him renders the sale void due to the element of debt in it.

779 Fem: *ma'dhūnah*.

780 She becomes an *umm al-walad*, and this status hinders her from revealing herself in public.

781 Abū Yūsuf and Muḥammad.

782 The chances are that one may be deprived of produce due the scarcity of such canals and ditches where fruitful crops may grow.

783 If both of them enter into a contract which they later realise was based on void conditions, then the contract of cropsharing is deemed invalid. In such a case, the produce shall go entirely to the provider of the seeds thereof. The labourer is entitled to remuneration and not to any share of the crops. If he would have received a share of the produce in any percentage, had the contract of cropsharing turned out to be valid, the price of which would have been fifty dirhams, he is paid an amount as remuneration for his provision of labour, and such amount shall not exceed fifty dirhams.

784 If the crops have not yet ripened, the cultivating partner in the contract is liable to pay rent for the use of the land until the crops ripen.

785 Abū Yūsuf and Muḥammad.

786 If the fruit has ripened and reached its peak, hence, the tree ceases to produce more fruit by labour than what is already on it, any contract of cropsharing through irrigation is void due to its purposelessness.

787 When the man says, “I have married you,” and the woman replies, “I have accepted it,” that concludes the marriage.

788 This is an order, and an order, in Arabic, is considered a part of the future tense.

789 Granddaughter.

790 Nieces from female siblings.

791 Nieces from male siblings.

792 The daughter in this sense refers to his wife as well any of the daughters of that woman with whom he may have lawfully consummated marriage.

793 Just as this prohibition applies to two sisters in the same marriage, so does it to two sisters lawfully owned as slaves (*milk yamīn*).

794 This is a hypothetical issue explaining the prohibition of being married to two women at the same time when if either of the two was a man, then it would have been forbidden for them to be married to each other, as in the case of blood siblings, foster siblings, consanguine and uterine relatives, etc.

795 A, a woman, was married to B, who had a daughter, C, from a previous wife, Z. B dies, leaving C in the care of A. A marries D. D may also marry C because there is no legal objection to this marriage.

796 This is similar to, but not the same as, a *decree absolute* (final judgement declaring a marriage dissolved) in civil law.

797 This also includes a revocable divorce (*ṭalāq raj'ī*). A revocable divorce in Islam is similar to, but not the same as, a *decree nisi* (provisional or interlocutory judgement granting a conditional divorce) in civil law.

798 If they set them free, they are able to propose marriage to them in both cases. Ed.

799 Zoroastrians or Parsees. Ed.

800 The term Sabian is applied to two groups: first, followers of one of the prophets, and second, a group that are devoted to the stars. Ed.

801 They may enter into a marriage with each other or with someone who is not a person in *iḥrām*, but they may not consummate the marriage by sexual intercourse due to restrictions imposed by the *iḥrām*.

802 Abū Yūsuf and Muḥammad.

803 Abū Yūsuf and Muḥammad.

804 Abū Yūsuf and Muḥammad.

805 Priorities of guardianship are given as those in priority of inheritance.

806 The guardians of a Muslim woman cannot be any of these categories of people, irrespective of close consanguine relationship with her.

807 In such an issue, the absence of male relatives (*'aṣabāt*) is a condition.

808 The nobility of the occupation, sources of financial income, employment, etc. are to be reckoned in the issue of suitability in marriage.

809 Mentioning fewer than ten dirhams is invalid, and so, any number that is mentioned below ten means 'ten'.

810 Consummation of marriage is by sexual intercourse.

811 Seclusion in this context refers to the husband and wife being together without the presence of anyone else and that neither of the two are prevented, whether physically or ritually, from sexual intercourse with the other.

812 These are obstacles in the way of performing sexual intercourse, and therefore, such a seclusion has no validity.

813 A gift of consolation is obligatory for her, unless the divorce is

pronounced according to this issue or at the instance of the wife.

814 If the slave is sold at any time after that, the dowry is a liability upon him in the form of a debt.

815 If, for example, a goat is mentioned without qualification, and the breed, colour, age, value, etc. are not specified.

816 This occurs when a man marries a woman saying to her that he has married her for, say, ten days, and he uses the word '*mut'ah*' or any of its variants, with respect to the marriage. In this kind of marriage, witnesses are not present.

817 This takes place when a man marries a woman for a fixed duration of time, say ten days or a month, and he uses the word '*nikāḥ*' or any of its variants, with respect to the marriage. In this kind of marriage, witnesses are present.

818 It depends upon the consent of that particular man or woman, as the case may be.

819 This is valid only when the son of the paternal uncle becomes the guardian of that female minor.

820 This is in the event of the non-payment of the dowry by the husband.

821 The waiting period (*'iddah*) applies in the event of divorce or widowhood.

822 The customary dowry [a woman of her standing would receive] is determined according to the dowries of women relatives of the bride from the father's side.

823 They could be from a different financial background where the dowries which they receive may not match the financial status of her father's family.

824 These are the categories of comparison in determining the dowry of the bride.

825 When someone is currently married to a free woman, he may not marry a slave-woman.

826 In comparison with the last issue, when someone is already married to a slave-woman, he may marry a free woman.

827 The maximum number of women that a free man is allowed to be married to simultaneously is four.

828 The option is whether to remain in that marriage or not.

829 The marriage is binding upon her.

830 The marriage is valid and binding.

831 The man is not able to retract the divorce in order to reclaim her, even if he regains potency after that, although he would be allowed to propose marriage to her again.

832 The separation begins after the cessation of the third menstrual period.

833 The offer of Islam to the husband lasts until the end of the third menstrual period, at the end of which the couple is separated in a final divorce.

834 He is not to marry any woman on account of his apostasy.

835 He is Muslim.

836 One of the People of the Book is closer to the natural religion of Islam than the Magian would be.

837 With respect to the marriage of a non-Muslim, if he marries according to the rites and rituals of his own religion, which may be forbidden in Islam, and then the couple convert to Islam, they are not required to repeal their marriage and remarry; their marriage is maintained and acknowledged. This case would have seen a prohibition in Islam due to the issuance of the marriage and its preconditions whereas its continuity shall not come into question.

838 As against the previous case, the continuity of this marriage would see a prohibition on account of the forbidden category of women coming into question.

839 During travel, all wives are treated with equal apportionment, irrespective of whether one is a slave-woman or a free woman. The husband may choose whichever of the two he may to travel with him and there is no 2:1 ratio in this respect.

840 The ruling of suckling is that it prohibits marriage between those suckled by the same woman, and the quantity of the suckling is immaterial.

841 Two and a half years.

842 Abū Yūsuf and Muḥammad.

843 Twenty-four months.

844 The natural period of suckling has elapsed and whatever follows is not taken into account.

845 Relationship due to suckling is, legally, the same as blood relationship, with respect to marriage. The suckling mother, her daughter, her other breastfed minors, be they her own or not, are forbidden for the suckled male to marry.

846 If a woman gains milk in her breasts due to a pregnancy caused by her husband, and she nurses another's female child with that milk, the female child is prohibited for marriage to her husband, due to milk-kinship, and also to his fathers and his sons.

847 When that sister is from different parents.

848 The brother being from the father's side.

849 The marrying brother is not related to the foster-brother's sister in any way whatsoever, be that by blood, by suckling or by marriage in any form.

850 They were both breastfed by the same woman.

851 When one is male and the other is female.

852 They are her foster brothers against whom the rule of prohibition applies.

853 The ruling is applied to the predominant aspect of the mixture.

854 Abū Yūsuf and Muḥammad.

855 The prohibition derives from the milk, irrespective of the method of its feeding.

856 The ratio is immaterial.

857 This is an exceptional case, and such-like cases are disregarded as rare and insignificant. The milk which invites prohibition is the milk of the woman.

858 The same applies to cow's milk, camel's milk, dry powdered milk, etc. The ruling of prohibition does not to apply to any milk other than that of a human.

859 This marriage is to a minor girl in the age of breastfeeding. It was not unusual in many parts of the world, including Europe, for very small children to be married contractually.

860 The relationship of the adult woman with the man becomes like that of a mother-in-law, and his relationship with that of the minor girl becomes like that of a foster father, as in the case of 'sire's milk' (*laban al-faḥl*).

861 Women alone are not to testify to prove or disprove a case regarding

suckling.

862 The method preferred by the Prophet Muḥammad ﷺ.

863 The method contrary to the sunnah.

864 Does not take her back nor retract the divorce.

865 In what follows the reader will have to distinguish carefully between the use of ‘revocable’, ‘fnal’ and ‘irrevocable’. If the man wishes to take his wife back during her waiting period (*‘iddah*) he ordinarily can do so, and this is referred to as a revocable divorce. A divorce is fnal, for example, when the divorced woman’s waiting period (*‘iddah*) expires and in other cases. But in many such cases, the man may propose marriage to her again and she may accept or refuse. However, in cases such as three pronouncements of divorce at one time, or after three pronouncements of divorce on three separate occasions, she is irrevocably divorced. They may only remarry after her marriage to another man, the consummation of that marriage and a subsequent divorce.

866 This is due to the innovation that he has acted upon.

867 In order to minimise her *‘iddah* as much as possible.

868 So that there is no possibility of conception.

869 This refers to non-menstruating women.

870 Keep her as his wife.

871 The express form of pronouncements of divorce produces only one revocable divorce irrespective of whether he had intended more than that or he had not even intended a divorce at all.

872 The word used for divorce here is the Arabic noun ‘*ṭalāq*’, or ‘*al-ṭalāq*’. This would generally mean one divorce, but when it is used for a plural term, as in three pronouncements of divorce, then they may apply because the definite noun may refer to the whole genus of an entity, like, ‘the horse’ may refer to one horse or to the whole genus of horses. The noun, when used with the intention of three pronouncements of divorce, produces all three pronouncements of divorce because the maximum number of pronouncements of divorce is three. It will not, however, produce two pronouncements of divorce with the intention of two because this word does not refer to two pronouncements of divorce in the literal sense at all.

873 This includes all figurative forms of speech, such as using metaphors, similes and indications.

874 For one divorce to take effect, the intention for divorce is sufficient, whereas, for three pronouncements of divorce to take effect, the intention must include all three.

875 Divorce only takes place when these words are used in a context of divorce and the married couple know what the other intends by these words with reference to the divorce itself.

876 Divorce.

877 Insult and abuse are the primary objectives in a heated quarrel between spouses. If such wordings are used which do not imply insult or abuse but are directed towards divorce, then divorce takes effect with such wordings.

878 That which is inseparable from her.

879 Since the mute cannot speak, any form of alternative means may be applied, which includes writing and all other forms of effective communication.

880 In this case, the man did not attribute ownership to the house.

881 When the maximum number of pronouncements of divorce have been exhausted, the previously made condition becomes null and void.

882 This is when ownership is gained, or regained, as the case may be.

883 When the husband does not own the house and the wife enters it, the condition will have been fulfilled but divorce does not take place.

884 When the menstrual bleeding for that period ceases, her period is complete.

885 That is when one issues all three pronouncements of divorce in separate instances.

886 When the husband says, “You are divorced once, once, once,” etc.

887 Abū Yūsuf and Muḥammad.

888 Marriage is a cause of inheritance. The divorce had not become final before his death and so she still inherits from him.

889 Contrary to the previous case, due to the lapse of the *‘iddah* the divorce is final and she does not inherit.

890 If he says, “You are divorced thrice, except for three,” all three pronouncements of divorce take effect, as against the previous two statements mentioned.

891 The marriage is void.

892 When a master marries his slave-woman to his son, and thereafter, the master dies, the son inherits the slave-woman into his ownership, thus acquiring ownership of the slave-woman, his wife. The marriage between the two becomes invalid and separation occurs.

893 This is approximately fifteen minutes.

894 The bathing not being complete.

895 She may adorn herself as she would for her husband in preparation for the retraction.

896 Irrevocable divorce.

897 He may not retract the final divorce nor may he remarry her, be it during the *‘iddah* or after its expiry.

898 If an adolescent boy marries the irrevocably divorced woman, consummates the marriage with her, then divorces her or dies, she is free to marry her former husband.

899 This is after her husband has irrevocably divorced her.

900 After being divorced, or widowed, by the second husband, and remarrying the first husband.

901 The two pronouncements of divorce are ignored and the husband acquires the right of all three pronouncements of divorce again. This also applies to the issuance of one pronouncement of divorce and three pronouncements of divorce.

902 The time between her divorce by the first husband and the ending of her *‘iddah* after the divorce by her second husband conforms to her statement.

903 This is a vow of continence.

904 These statements refer to the performance of sexual intercourse with her.

905 This is the second final divorce.

906 This is the third and final divorce which is irrevocable.

907 This includes the subsequent divorce, the result of which is to make her *ḥalāl* for remarriage to her former husband.

908 After the elapse of four months, if such condition exists, no divorce will be issued, but the husband will be required to expiate or atone for his vow if he breaks it, which he is recommended to do.

909 *Īlā’* is a minimum of four months duration.

910 His own wife.

911 The marriage remains intact and, therefore, *īlā’* is practicable. The duration of such *īlā’* extends the duration of the *‘iddah*.

912 Sexual intercourse is not practicable since he cannot retract a final divorce.

913 This is half that of a free woman.

914 Such statement must be verbal and express, though written and indicative forms may be admissible according to the nature of the case and of those involved.

915 Such return must be made within the four month period of *īlā’*. Sexual intercourse, nevertheless, leads to a violation of the vow that must be atoned for and not the verbal proclamation.

916 Recovery from illness includes the removal or vanishing of any reason or excuse which prevented sexual intercourse, like minority age, distance, etc.

917 This property, or wealth, is the consideration paid by the wife to her husband, in exchange for her freedom from him.

918 The judge will decide about the husband if he demands more as consideration than the value of the dowry he had given to her.

919 The husband shall receive nothing due to the invalid consideration being useless to him as it does not constitute wealth (*māl*). The separation in the divorce at the instance of the wife (*khul‘*), however, is valid.

920 As against divorce at the instance of the wife (*khul‘*), the invalid consideration in divorce renders it revocable.

921 Contrary to the previous case, the word goods (*māl*) has been expressly stated by the wife.

922 The word ‘dirhams’ has been used which is plural, and the plural in Arabic refers to a minimum of three.

923 Abū Yūsuf and Muḥammad.

924 The husband demands a thousand, less than which he will not accept, and taking less than the three pronouncements amounts to less than a thousand.

925 This includes kissing, touching, fondling and sexual intercourse.

926 The opposites are, left hand and right foot, or right hand and left foot.

927 The *umm al-walad* is automatically set free on the death of her owner.

928 The condition for this instalment-based emancipation is that the person who made the injurious comparison (*muẓāhir*) does not resume normal marital affairs prior to the complete emancipation of the slave, which includes the second half.

929 See previous footnote.

930 In this month, all fasts are obligatory, hence, no expiatory or supererogatory fasts are permitted.

931 These are the days in which fasting is prohibited due to their unique sanctity.

932 This includes an undue breaking of the fast, which invalidates it, as well as its omission.

933 The two months of expiation.

934 If he has fasted a month and a half then misses one day of fasting, he is required to restart the two months from the first day.

935 This is irrespective of whether he feeds him according to his requirement only, or whether he gives him that which is enough for sixty needy people.

936 For any act that is prohibited due to the commission of the offence of unlawful injurious comparison, such as kissing, touching, fondling and sexual intercourse.

937 These qualities are: Muslim, sane, major and free, and not having been guilty of unsubstantiated accusations of sexual impropriety.

938 I.e. to swear four oaths that he is truthful and then to call the curse of Allah on himself if he is lying.

939 The *ḥadd* punishment is applied to him if he makes an admission of his own false accusation. The *ḥadd* punishment for making unsubstantiated accusations of sexual infidelity (*qadhf*) is applied in such a case, and that is eighty lashes.

940 She swears four oaths that he is lying and that the anger of Allah is on her if he is truthful.

941 The husband.

942 Her acknowledgement of him proves the offence of adultery (*zinā*) against her, which makes her punishable with the *ḥadd* punishment for adultery.

943 The husband is eternally prohibited to remarry her.

944 When the husband refuses to accept paternity of the child, such a refusal is an accusation of adultery against his own wife. The judge legally severs all ties between the child and the husband of its mother, and he surrenders the child into the custody of its mother alone.

945 When he goes back on the accusation of adultery which he had made against his wife.

946 This applies when the fact of the pregnancy is not established by way of factual scientific evidence, otherwise, the following issue is to be borne in mind.

947 This is forty days.

948 Due to his unsubstantiated accusation of adultery against his wife.

949 Give birth to the baby.

950 A half of that of the free woman.

951 When Mr. A divorces Mrs. A, and the former then dies soon afterwards, Mrs. A inherits Mr. A and her *‘iddah* is the longer of the two periods, that is, the period of four months and ten days, or the period of three menstrual cycles.

952 Knowledge of her *‘iddah* is not a requirement for it to be valid, hence, if the *‘iddah* passes without her knowledge of it, it officially is deemed to have passed, as it would have in the cases of the divorcée or widow who do have such knowledge.

953 If both spouses of an invalid marriage are separated, such separation amounts to divorce, and the woman begins her *‘iddah* at the instant of separation. If, however, they are not separated, but the husband resolves not to have sexual intercourse with her any longer, the *‘iddah* of the wife begins, in this case, at the instant of the resolve.

954 This includes the condition of sanity.

955 Mourning is incumbent.

956 All modes of beautification are to be avoided, such as make-up, prettified clothing and jewellery, etc.

957 ...or death of the husband.

958 When the other heirs do not help her by providing her with portions from their own shares.

959 She is to observe the *‘iddah* from the beginning.

960 The establishment of the paternity refers to its descent from the husband of its mother, unless otherwise stated.

961 The child must be born within two years from the death of the husband of its mother.

962 The child being born more than ten months after the beginning of the *‘iddah*.

963 Ample proof is required to link the paternity of a child to its bona fide father when the child is born after its mother has been widowed or divorced. Visible signs of pregnancy, quorum of testimony and confession are the methods that may be employed in such a case.

964 If the pregnancy is evident then the testimony of witnesses is not required.

965 If, in the case of divorce, the husband acknowledges the paternity of the child, and in the case of the death of the husband, the deceased husband’s heirs acknowledge the same.

966 That is when the wife had told the woman of the conception resulting from sexual intercourse with her husband.

967 She is free to act according to the procedures and regulations as set out within her own religion.

968 The widow is not entitled to maintenance due to the inheritance that she will receive.

969 For example, when she indulges in adultery, or she leaves the fold of Islam, etc.

970 It is immaterial whether the divorce is of a revocable or of an irrevocable nature.

971 This refers to sexual enticement and seduction as well as physical empowerment and control.

972 She may borrow money or take goods on his account and he is liable for their repayment.

973 If the husband was poor, and he was paying her fifty dirhams per week as maintenance, and now he has become wealthy, the woman may dispute this with him and the judge subsequently raises her maintenance payment from fifty dirhams per week to whatever amount he sees fit regarding the

current improved financial circumstances of the man and the current essential requirements of the wife.

974 If the husband does not pay the maintenance for a period of time, the judge may prescribe it for her, or she makes an agreement with the husband regarding its current amount, and the judge subsequently adjudicates the past payments with respect to the amount agreed upon between the spouses.

975 If the husband paid her for twelve months in advance and he died after eight months, she is to repay for the four months that remain.

976 The wet nurse.

977 The husband is only obliged to pay the amount that was agreed upon between the two and any further demand need not be entertained.

978 Full maternal aunts (the mother's full sisters) have more right than the mother's uterine sister, followed by the mother's consanguine sister.

979 The priority of custodianship is determined in the same manner as that of the sisters and the aunts. Full paternal uncles (the father's full brothers) have more right than the father's uterine brother, followed by the father's consanguine brother.

980 The setting free of the slave-woman and the mother of her master's child (*umm al-walad*) renders both of them free women in matters pertaining to the custody of the respective child.

981 This includes all physically and mentally disabled persons who are unable to earn a living for themselves.

982 Manumitting slaves.

983 These words or statements are generally used for emancipation and manumission, therefore, the intention is immaterial.

984 For example, if the master is black but the slave is caucasian.

985 One may not own an un-marriageable relative (*dhū raḥm maḥram*) as a slave.

986 If the master frees a quarter of his own slave saying, "You are 25% free," the slave now belongs to his master at 75% of his original self. He shall work for that value of his.

987 Abū Yūsuf and Muḥammad.

988 When each states that the other has set his share of the slave free.

989 Abū Yūsuf and Muḥammad.

990 Where the master is the father.

991 Where the slave is the father.

992 Transfer of ownership of the slave is not allowed either.

993 If the master leaves behind three thousand dirhams worth of property as inheritance, and the slave is worth less than one thousand dirhams, which is one-third of the total value of the property, he is free. If he is worth more than one thousand dirhams, then whatever of excess he is worth over the third, he works for that amount and pays it to the heirs before he may be set free.

994 If the master leaves behind nothing as inheritance other than the slave, the slave works for the amount of two-thirds of his own value and pays it to the heirs before he may be set free.

995 He may not give her away either.

996 The acknowledgement of the first child.

997 Unlike the slave who is to be set free on the death of his master (*mudabbar*) who is set free from the third of the property if it can be extracted from it, the mother of the master's child (*umm al-walad*) is set free irrespective of the amount of the inheritance left behind by the master. If she was the sole property of the master, and thus, the only inheritance, she is, nevertheless, set free.

998 The compensatory dowry (*'uqr*) is what is paid to a woman in place of a dowry when sexual intercourse has been had with her due to some ambiguity.

999 Neither receives from the other.

1000 Half from each partner.

1001 Upon his death, whatever the son leaves behind as inheritance, the inheritance share of one father is divided between the partners.

1002 The contract, or act of entering the contract, is known as *kitābah*.

1003 The feminine for *mukātab* is *mukātabah*.

1004 The offer of the contract of *kitābah*, i.e. the contract to purchase his own freedom, is made by the master to his slave, or slave-woman, with the consideration of payment of anything with financial value from the slave or slave-woman to the master, in order to secure his or her freedom. The contract is concluded with the acceptance of the offer by the slave or the slave-woman, as the case may be.

1005 The master rendering anyone into a slave who has contracted to

purchase his freedom (*mukātab*) refers to him entering into a contract of *kitābah* with that slave or slave-woman.

1006 The slave who contracts to purchase his or her freedom is treated as a free person, so that crimes against their person are subject to judicial retaliation or compensatory payment.

1007 The master is irrelevant with regards to the property of his slave and slave-woman who have contracted to purchase their freedom, hence the repayment of its value to them.

1008 Those *dhū raḥm maḥram* relatives who have no relationship of birth to one include siblings, siblings of parents, children of siblings etc, whereas those who do have a relationship of birth include parents, grandparents – howsoever high, and children, grandchildren – howsoever low.

1009 He is legally declared free just before his death took place.

1010 Initially, his property is used to dispose of the debts that have accrued on him, including the amount that he owes his master due to the contract to purchase his freedom. Then whatever remains is distributed amongst his heirs as inheritance.

1011 The slave who has contracted to purchase his freedom (*mukātab*), though set free, must work for the value of whatever he has given in consideration of the contract and he is to surrender that to the master. Whatever amount he pays to the master must not fall below the value of the article which he has surrendered.

1012 Both slaves must agree to this offer of contract, otherwise it is not binding.

1013 The amount of one thousand dirhams is due from both of the slaves who have contracted to purchase their freedom jointly; if one pays all of it, or both of them pay equal or unequal amounts, it suffices.

1014 The *umm al-walad* becomes free on the death of her master in any case.

1015 *Walā’* involves the master becoming one of the heirs of the slave, and standing responsibility for any compensatory payments he might become due for causing damage, injury or even homicide.

1016 *Walā’* includes the master becoming an heir of the former slave and being responsible for compensatory payments he might incur for damage, injury or homocide.

1017 The inheritance of the freed slave is to be divided amongst his male consanguine relatives.

1018 In the absence of *‘aṣabah*, the inheritance of the freed slave goes to the one who freed him.

1019 Related to each other as uncle and nephews/nieces.

1020 The master (*mawlā*) here can also be the man with whom the treaty of clientage (*walā’*) has been made in the previous paragraph.

1021 Standing legal responsibility denotes practical liability for the slave, or the freed slave or the man who accepted Islam and voluntarily entered into a contract of clientage.

1022 As mentioned above, the treaty of clientage can only be made between the master who sets the slave free and his slave, and between the man who accepts Islam and takes the person who accepted him into Islam as his master (*mawlā*). But this paragraph refers to the first instance of the freed slave.

1023 Like the parts of the human body, etc. All weapons or potential weapons are those instruments that would normally cause the death of a person.

1024 Abū Yūsuf and Muḥammad.

1025 See Chapter of *Ma‘āqil* – Payers of *Diyāt*/The Legally Responsible Group. The *‘āqilah* are the body of male paternal relatives (agnates) who are legally responsible with the killer to pay the compensation. In certain circumstances it includes the men of the *dīwān* register of soldiers.

1026 This includes mentally or physically disabled.

1027 A, the father of B kills his own father-in-law, who is the maternal grandfather of B. The mother of B dies and so B inherits the right of retaliation against his own father, A. This right of retaliation is automatically waived due to fatherly sanctity; the son cannot exact retaliation against his own father.

1028 This is irrespective of the instrument of offence and the manner and the method of the offence committed, but some scholars take the position that contemporary means of exacting retaliation are justified with regards to the

objective sought.

1029 i.e. because he is still a slave and the master has the right of retaliation.

1030 Both, the pledgor and the pledgee must be present in person as well as give legal consent in order to carry out the necessary directives.

1031 The word *‘ṣāḥib al-firāsh’* can be used for one who is bedridden or crippled due to an injury or illness which is potentially fatal.

1032 This is the cartilage of the septum.

1033 Whoever amputates or severs either of these parts of another, the same amputation is carried out against him in that respective part, e.g. a hand for a hand, a foot for a foot, an ear for an ear, etc.

1034 This includes glass.

1035 The term quasi-intentional (*shibh al-‘amd*) is only to be applied when a loss of life occurs. In injuries, this term does not apply, and an injury may either be intentional or unintentional but not quasi-intentional.

1036 The victim of criminal amputation.

1037 The offender.

1038 One reason may be that the head of the victim may be relatively smaller than that of the offender, and so a wound of similar size would not reach from one side to the other.

1039 The glans penis.

1040 The offender can only be killed once, and there is no question of compounding or negotiation.

1041 The first man is treated as a victim of intentional homicide (*qatl al-‘amd*) and the second is treated as a victim of unintentional homicide (*qatl al-khaṭa’*).

1042 The expiation for unintentional homicide is to free a believing slave or, if unable, to fast two consecutive months (Sūrat an-Nisā’ 4:92).

1043 Abū Yūsuf and Muḥammad.

1044 A set of clothing is ordinarily an *izār*, a waist-wrapper garment for the lower half of the body, and a *ridā’* or outer wrap for the upper half of the body. Ed.

1045 The value of a Muslim and of a non-Muslim living under Muslim governance (*dhimmī*), is the same with regards to offences committed against his life or against his body.

1046 They are to be treated as organs of which there is only one if the offence extends to both of them.

1047 If the offence has only affected one of the pair, then there is payment of a half of the compensatory payment (*diyah*).

1048 These are the phalanges of the fingers and thumbs.

1049 The thumbs.

1050 This also includes the canines.

1051 Someone who is a just and knowledgeable person of an upright and noble character.

1052 A twentieth, or five percent, of the [full] compensatory payment.

1053 This amounts to a total of fifteen percent.

1054 One from either side.

1055 The indemnity of *mūḍiḥah* is not a full *diyah*, but when its impact results in the permanent hair loss of the victim, or the loss of his intellect, the compensatory particular shall be a full *diyah* because the loss of intellect could render the limbs useless.

1056 This compensatory payment (*diyah*) is for the senses of hearing, sight and speech, as the case may be, as against the previous issue where a full compensatory payment applies.

1057 It is not from the responsible group (*‘āqilah*).

1058 This is the maximum time limit given.

1059 This is when both are intended to be within the walls of the property.

1060 If such is undertaken in the private property of another person.

1061 If the slave is worth one thousand dirhams and the compensation (*arsh*) for the offence committed is eight hundred dirhams, the master is liable to pay the lesser, which is eight hundred dirhams. Similarly, if the compensation for the offence committed is twelve hundred dirhams, then the master is liable to pay one thousand dirhams, which is the value of the slave and the lesser amount of the two.

1062 This includes two pedestrians, drivers, cyclists, etc. colliding with one another.

1063 9990 dirhams.

1064 4990 dirhams.

1065 4995 dirhams.

1066 This includes any legally responsible person.

1067 One twentieth, or five percent.

1068 In this case, though the offender is absolved of any liability towards the stillborn, he is, however, liable to pay the compensatory payment (*diyah*) for causing the death of the woman.

1069 The compensation, i.e. *ghurrah*, is paid to the inheritors of the foetus.

1070 One twentieth, or five percent.

1071 The people of the locality are required to make compensatory payment (*diyah*).

1072 These are the categories of people from whom the oath is not taken.

1073 Of wrongful death, like killing.

1074 If landlords are available, and they live in the locality, then they take part in the *qasāmah* and not the tenants.

1075 Not people who bought those lands from the *ahl al-khiṭṭah*.

1076 The word ‘Euphrates’ here is purely hypothetical and includes any river, canal, stream, natural or artificial.

1077 This excludes the compensatory payment (*diyah*) to be paid due to compounding or negotiated settlement, etc.

1078 This applies to military personnel only.

1079 The *dāniq*, also pronounced *dānaq*, is a sixth of a dirham. Ed.

1080 He pays an amount equal to whatever each of the others pay.

1081 This is the free man who has accepted Islam and who takes the person from whom he accepted Islam as his *mawlā*.

1082 One twentieth, or five percent.

1083 If the total liability is less than the value of five percent of a full compensatory payment, it is taken from the property of the offender and the legally responsible group are not obliged in any way.

1084 If they all agree to its payment.

1085 These limits are those fixed in the revealed Islamic legal texts.

1086 The term *zinā* denotes all categories of sexual misconduct such as fornication, adultery and rape i.e. the rape of the offender, not that of his victim.

1087 It is legally proven, and thereby established, by either of the two methods.

1088 This is the quorum that must be satisfied in order to establish legal evidence of *zinā*.

1089 The witnesses are to be investigated regarding their reputation, their moral and social stature as well as their mental stability, etc., in their private as well as in their public lives, thus to ensure the strength of their evidence.

1090 The confession is to be made four times, in four separate sessions, each session being held specifically for the confession of the offence of unlawful sexual intercourse.

1091 The *muḥṣan* is someone, male or female (*muḥṣanah*), who is married or has been married at some point, in a marriage that was consummated. Ed.

1092 The funeral prayer is performed over him.

1093 The punishment and its procedure is the same for men and women.

1094 The woman is to remain clothed but the fur and padding in her garments, if any, are removed so that the impact of the strokes is not diminished.

1095 The ditch, or trench, may be up to chest height.

1096 All four witnesses are subjected to the *ḥadd* punishment because the required number of witnesses has not been reached, and therefore, this amounts to unsubstantiated accusations of unlawful sexual intercourse.

1097 See previous footnote.

1098 These are the qualifications of a *muḥṣan* with respect to the offence of unlawful sexual intercourse. The qualifications of a *muḥṣanah* are the same.

1099 Only one form of punishment or the other will be applied.

1100 That is when he is *muḥṣan*.

1101 Delivers means that she delivers the baby, aborts it or miscarries it, each resulting in her losing her status as somone who is pregnant.

1102 The *ḥadd* punishment may be applied to her when she is in her postnatal bleeding period.

1103 Lashing is delayed.

1104 They were close enough and possessed the capacity to testify before the leader (Imam).

1105 This exception stands due to the rights of the people (*huqūq al-‘ibād*) being of immediate concern.

1106 *Ta‘zīr* is a discretionary punishment for an offence for which there is

no *ḥadd* punishment, the purpose of which is to disgrace the offender for what he has done. It is not explicitly defined in the Qur'ān or the Sunnah, but defined by juristic deduction from Islamic evidence. In the Ḥanafī school it may not exceed a half of the *ḥadd* punishment.

1107 This is according to Abū Ḥanīfah, may Allah have mercy on him. According to Abū Yūsuf and Muḥammad, may Allah have mercy on them, he is subject to the *ḥadd* punishment.

1108 Fellatio, cunnilingus and sodomy/anal intercourse.

1109 Homosexual sodomy.

1110 Abū Yūsuf and Muḥammad.

1111 Bestiality.

1112 The territory of those who rebel against the lawful ruler.

1113 The offender should be in the state of intoxication to qualify for the *ḥadd* punishment.

1114 One charged with the willful consumption of wine or any other alcoholic or intoxicating substance is not punished whilst he, or she, is under the influence of that substance. The punishment may only be carried out after the effects of the substance have worn off.

1115 Who accuses another of unlawful sexual intercourse without substantiation.

1116 *Iḥṣān* in the case of the person to be stoned to death in the case of unlawful sexual intercourse and *iḥṣān* with respect to the character of the person against whom unsubstantiated accusations of unlawful sexual intercourse are made, share the first four points.

1117 Someone directly affected by such an allegation has the right to demand the *ḥadd* punishment for unsubstantiated accusations of unlawful sexual intercourse made against someone who is dead, such as the child of the deceased father or mother.

1118 *Mā' as-Samā'* was a woman who was the progenitor of a Yemeni tribe. The point being that the slanderer insinuated that the Arab was not descended from whom he claimed. Ed.

1119 If the woman has been accused of unlawful sexual intercourse because she has given birth to a child not belonging to her husband, then in such a case her accuser is not subjected to the *ḥadd* punishment, and likewise, if she

bears a child whilst not being married.

1120 This is for all present and future legal proceedings, where his testimony will never be accepted.

1121 Contrary to the previous case, this is a new beginning for the new Muslim whose previous sins have been forgiven because of his acceptance of Islam.

1122 *Maḍrūbah*: that which is in the form of minted coinage. It refers to any form of money, be it coins, paper or otherwise.

1123 This refers to the ruling being obligatory.

1124 This includes decoration with gold, silver and gems on it.

1125 This includes all games of chance and those wherein dice and playing cards, are used.

1126 Files of genuine value that could be the subject of the *ḥadd* punishment of amputation include all files of personal and sensitive data from whose theft the aggrieved individual, or group, could suffer financial loss. It is possible that 'identity theft' would be included under this ruling.

1127 If A steals some property from B in which A himself has a share, A is not subject to amputation.

1128 In such a case, the offender is imprisoned.

1129 The alteration occurs when the woven thread is woven into a garment, cloth or other form of material.

1130 Lit: cut or intercept the path.

1131 Alternate hands and feet are the right hand and the left foot.

1132 They are subjected to the *ḥadd* punishment for the crime of murder.

1133 The heirs of the victim have no right to award the culprits forgiveness due to this act of banditry being contravention of a right of Allah rather than a right of people.

1134 This is because a *ḥadd* punishment of this nature cannot be applied to a minor, someone who is insane or an un-marriageable relative (*dhū raḥm maḥram*) of the victim.

1135 This is a collective punishment due to the collective nature of their crime.

1136 This is the process whereby the juice, mixed with other ingredients, causes a chemical reaction to produce wine or other alcoholic drinks.

1137 During the process of fermentation, the wine is stored at temperatures between 60 and 90 degrees Fahrenheit (16-32 Centigrade) for red wine and 50 to 60 degrees Fahrenheit (10-16 Centigrade) for white wine. At this point, it froths vigorously, producing alcohol from the sugar and giving off a distinct odour.

1138 Without involving cooking, boiling or other forms of manipulation.

1139 Boiling or cooking juice until most of it has evaporated and one-third or less of it remains renders it lawful, but if more than two-thirds remains it is not lawful.

1140 This is when it ferments and bubbles.

1141 When the mead (*nabīdh*) of dates and raisins is partly-cooked, even to a boil, but not completely fermented or producing an intoxicating beverage, and one drinks from it without intending to derive amusement or pleasure from it, thinking that it will not intoxicate, then such mead is permissible.

1142 This is subject to neither of the drinks being an intoxicant.

1143 Durra – *dhurah* – is a type of sorghum or millet.

1144 Cooking is when the pot comes to a boil.

1145 This includes any large feline predator which is trained for hunting purposes.

1146 When the dog has hunted three times and each time it has refrained from eating anything of its kill.

1147 If the game dies whilst the hunter could have slaughtered it, it is not lawful for consumption.

1148 These situations are not to do with shooting the animal but the death of the animal caused by drowning or falling from a height. Ed.

1149 This is like killing an animal by hitting it with a stick, or bludgeoning an animal with a large blunt object.

1150 This is subject to lawful slaughter.

1151 This includes bullets, stones and other missiles which do not cut through the animal making an incision, like a knife, blade or arrowhead would, but rather push through the object.

1152 When two-thirds of the hunted animal is connected to the posterior and a third or less is connected to the head.

1153 Contrary to the previous issue, the larger portion being the portion

attached to the head is lawful but not the whole animal.

1154 It would be taken out of the boundary of prohibition and rendered lawfully edible if it was injured to such an extent that it died of the wound, otherwise its death would be considered one of natural causes, which would consequently prohibit it for human consumption.

1155 From a legal stance, such a hunted animal is not legally edible when the first hunter had enfeebled it and could have slaughtered it, thereby rendering it lawful. The second hunter, in this case, has destroyed the lawful edible nature of the game by his firing the arrow and killing it when the first hunter had already weakened it.

1156 If the game was worth one hundred dirhams, and the second hunter had shot the arrow wounding it in such a way that its value has diminished twenty dirhams, the latter pays the former eighty dirhams.

1157 The animal slaughtered by a person of the People of the Book (*kitābī*) is only sought if one slaughtered by a Muslim is not available.

1158 It is treated as carrion and is not lawfully consumable.

1159 Med: pharynx.

1160 Med: clavicle.

1161 Med: trachea.

1162 Med: oesophagus.

1163 They are the interior jugular vein and the exterior jugular vein.

1164 Abū Yūsuf and Muḥammad.

1165 These are teeth and nails that are yet unsevered and physically attached to a body.

1166 This is one that has been domesticated.

1167 This is when the livestock animal has been released or has escaped into the wild. If the animal is pierced by an arrow or stabbed or wounded by a blade and bleeds to death it is lawful to eat.

1168 *Naḥr* is to stab into the jugular vein of an animal, e.g. the camel. Ed.

1169 This includes the jackdaw; it is not a bird of prey, does not eat filth but relies on vegetation.

1170 This includes the carrion crow, which is a bird of prey. The raven, rook, carrion crow, hooded crow and magpie are all carnivorous, and all eat carrion, so are comprised under the term ‘speckled crow’.

1171 This is due to its sanctity.

1172 This is due to its unclean nature, i.e. it is *najis*.

1173 *‘Īd al-Adḥā*, the tenth day of Dhu’l-Ḥijjah.

1174 *Thanī*: a five-year old camel, two-year old bovine animal or one-year old sheep or goat.

1175 *Jadha‘*: a lamb of six months and over. In this case, it is a condition that such a lamb be physically large enough not to resemble that which is younger than six months.

1176 i.e. one should donate at least a third of the meat.

1177 In this example, the Divine name terminates with a *kasrah* vowel “Allāhi” indicating the oath.

1178 The slave may be Muslim, non-Muslim, male, female, major or minor.

1179 That is a half *ṣā‘* of wheat, one *ṣā‘* of dates, one *ṣā‘* of barley or the value thereof, for each destitute person.

1180 The breach of the oath must take place before one may be rendered guilty and thereby required to pay the penalty. The advancement of the penalty, irrespective of its form or method, is not acceptable as it holds no expiatory value.

1181 Though the oath has been made, the purpose of the oath is illegal and/or immoral, and he must not carry it out. His inability to carry out his oath places him in direct violation of it, for which he must pay expiation.

1182 A house (*dār*) in this regard is one built of walls, ceiling, etc.

1183 In contrast to the previous issue, a home (*bayt*) differs from a house where the latter is a purpose built dwelling, irrespective of whether it is inhabited or not, whereas a home is one that is inhabited, be it made of mortar and bricks, of wood, of boxes, of rags, of leaves or of anything that may or may not serve the purpose of an abode.

1184 He swears not to drink from the ‘Tigris’.

1185 He swears not to drink from the ‘water’ of the Tigris.

1186 The transfer, removal or death of the governor releases the *ḥālif* from his oath and he is not liable to the succeeding governor.

1187 As in the previous issue, it does not include the onions, potatoes, etc. of the complete dish.

1188 Rice bread is not customarily eaten in Iraq.

1189 Anything upon the bed which does not alter the basic condition of the bed itself may fall under this case, such as an extra mattress over the original mattress, an extra duvet, bedspreads, throws, under-blankets, over-blankets, an electric underlay, etc.

1190 The bed on top is not the same bed as the one in the oath.

1191 Irrespective of whatever his oath may be, the words *‘in shā’ Allāh’* revoke the oath if said together with, and as part of, the oath.

1192 Capacity refers to someone’s possibility of travel, its affordability financially, the risk involved, safety and time-keeping.

1193 Seven days.

1194 It may also be called ‘tea’, and if a major meal, ‘dinner’.

1195 In the near future.

1196 He must repay the debt within the space of one month.

1197 He may take longer than a month to repay the debt.

1198 These are acts that are humanly impossible, i.e. which cannot be accomplished.

1199 Today.

1200 This is when he vows not to take repayment of the debt owed him by another in dirhams separately, or in instalments.

1201 A repays his debt to B, which is twenty kg of rice, in two separate bags of seven kg and thirteen kg each. B weighs both bags separately and does not do anything else between the two weighings. This is considered as one lump sum without separation.

The weighings may exceed two, and so long as the person swearing the oath does not perform any act between any of the weighings, the transaction is considered to be a single one and there is no violation of the oath thereby.

1202 If the defendant refuses to take the oath, the plaintiff is not asked to take it.

1203 When someone claims to own land that is in his possession but does not provide sufficient evidence about his ownership, such insufficient evidence is not admissible.

1204 When A claims to have married a woman and she refuses to acknowledge it, or vice versa.

1205 When the husband issues a revocable divorce, and after the lapse of the

divorcée's *'iddah*, he claims to have revoked the divorce within the *'iddah*, but she denies it, or vice versa.

1206 When A, the man who had vowed to abstain from sexual intercourse with his wife for a period of four months or more (*mūlī*) claims to have revoked the vow of *īlā'* within its term and his wife denies it, or vice versa.

1207 When A claims an unknown person to be his slave and the latter denies it.

1208 When a slave-woman claims to be the *umm al-walad* of A, and that such-and-such a child of hers is from him, and A denies it.

1209 When A claims to be the father of B and B denies it.

1210 When A claims to have clientage (*walā'*) over B and the latter denies it.

1211 When A accuses B of violating an injunction culpable under *ḥudūd* laws.

1212 When B, the wife of A, alleges that A has accused her of an act, the accusation of which may be dealt with under *li'ān*, and A denies it.

1213 Imams Abū Yūsuf and Muḥammad.

1214 The item is divided equally between the two parties in a reasonable manner.

1215 He may sell his own half share of the slave to the other party or buy the other party's half share.

1216 If he gives them co-ownership, a half each.

1217 This is the date of purchase or of ownership acquired otherwise.

1218 The party which claims to have bought the slave on the earlier date of the two has a greater right to his ownership.

1219 The slave, i.e. that he was given to her as dowry.

1220 In contrast to the previous cases, this one deals with two claimants to the ownership of one and the same object, with neither of them having possession. If both claimants furnish evidence of its ownership together with their respective dates of acquiring that object then the claimant with the earlier date has more legal right to it.

1221 The item is half and half between them both.

1222 The word used here is *nitāj* (produce) which refers to an animal's offspring.

1223 It takes place only once, such as the birth of offspring, the weaving of yarn, the growing of a certain crop at a certain time, etc. In cases like these, the person who has possession has a legitimate right to retain possession and, with that, ownership of the object in question.

1224 The phrase used is *tahātur al-bayyināt* (mutual contradiction of evidence) which is a legal term in Islamic Law, similar to 'rebuttal' in Common Law, whereby the two pieces of evidence cancel each other out.

1225 The possessor retains possession and acquires ownership.

1226 The quantum of testimony in such cases is two male witnesses, or one male witness with two female witnesses; any number of witnesses in excess of these has no legal effect upon the weight of the evidence.

1227 e.g. for bodily harm.

1228 See Chapter of *Kafālah* – Surety.

1229 The same person from whom the plaintiff had purchased the item.

1230 i.e. the person made to swear the oath is not required to do so on pain of divorcing his wife or freeing a slave.

1231 Like Friday, the month of Ramadan, etc.

1232 Like within the Sanctuary of Makkah, inside a *masjid*, etc.

1233 Abū Yūsuf and Muḥammad.

1234 Two-thirds for the one who claims the whole building and a third share for the one who claims a half.

1235 Immediate payment or on credit.

1236 When the buyer claims to have bought the goods upon stipulation that he has the option of cancellation and the seller denies that.

1237 When the buyer claims to have paid a portion of the total price and the seller denies it.

1238 After the buyer has taken possession of it.

1239 Whilst in the possession of the buyer.

1240 The living slave is returned to the seller and the price of the perished slave is paid to the seller by the buyer according to the amount agreed by the latter.

1241 She is entitled to the customary dowry [a woman of her standing would receive].

1242 The hireling and the employer.

1243 The contract of lease (*ijārah*) is rescinded by the repayments. For example, A, the employer, asks B, the hireling, to build a house for him. A claims to have agreed to pay 50,000 dirhams for the construction work, whereas B claims that the agreement was made for 70,000 dirhams. If the work has yet not begun, then both parties are made to swear oaths and mutually rescind the contract. All equipment is returned to the original provider, and any advance payment, if made, is returned.

1244 The employer takes an oath in order for his statement to be reliable. Contrary to the previous issue, after the completion of the house, the claim of A, with his oath, is weightier.

1245 The statement of the slave who has contracted to buy his freedom, together with his oath, is the more reliable statement of the two.

1246 Abū Yūsuf and Muḥammad.

1247 A, the wife of B dies, and the heirs of A dispute with B with regards to the inheritance of the household goods. The heirs of A are entitled to those household goods which are exclusively of use to women. B may retain all household goods which are exclusively of use to men and also those that are of use to both men and women.

1248 Or her heirs, as the case may be.

1249 Or his heirs, as the case may be.

1250 A, the seller of the slave-woman, claims to be the father of her child whom she bore between six months and two years after her sale to B the new master; the claim of A is void. It is an exception to this case if B verifies that he himself has had no sexual contact with the slave-woman and that the father of the child is in fact A.

1251 Abū Yūsuf and Muḥammad.

1252 The seller takes possession of the child, and therefore is liable to return the share of the child only.

1253 That is, if the paternity of either twin is established, then both twins are his.

1254 These include defamation, theft, intoxication, etc.

1255 The testimony of two women is better, but one is also acceptable.

1256 The qualification for one to be a credible witness in the court.

1257 Such as, “I testify…,” or “I bear witness….”

1258 The credibility and legal qualifications of the witness is verified and proven before he is allowed to testify in such cases.

1259 The ruling of testimony is established when the witness is permitted to testify.

1260 Whatever is in question.

1261 This may include any piece of writing, handwritten or otherwise, from signatures, letters, notes or mere scribbles.

1262 Testimony is based on memory and not written records. The written record is acceptable only if it has not changed hands and remains in the possession of the original issuer at all times so as to dispel all doubts of its possible editing.

1263 Someone who intentionally remains intoxicated for sheer fun and amusement.

1264 Such as pigeon-racing, fighting cockerels, quails and grouse. Other forms of non-beneficial sports involving animals or other things may be comprised in this category.

1265 Public baths, swimming pools, spas and springs are all included.

1266 All acts of gambling are included. Betting on the outcome of sporting events and games, casino-based and internet-based gambling are also forbidden.

1267 They are those who do not follow the beliefs of the *Ahl as-Sunnah*. These include the *Jabariyyah*, the *Qadariyyah*, the *Rawāfiḍah* (*Shī‘ah*), the *Khawārij*, the *Mu‘aṭṭilah* and the *Mushabbihah*.

1268 A sub-sect of the *Rawāfiḍah*.

1269 Because of the discrepancy between their evidence. Ed.

1270 i.e. that they agree on one thousand but do not agree on two thousand, so the lesser sum is accepted. Ed.

1271 Having decided upon the first testimony, the second testimony is not entertained.

1272 As an exception to the case in question, this refers to rights of the Creator (*ḥuqūq Allāh*) and rights of the creation (*ḥuqūq al-‘ibād*). A claim by the defendant of disparagement or negation of the plaintiff’s witnesses will not stand unless it refers to the infringement of a right against the creation or against Allah ﷻ and not of a mere wrong committed by the witness against

oneself.

1273 He is the witness to the original event in question and has firsthand knowledge of what occurred.

1274 He is the witness to the testimony of the witness of the source.

1275 The *shuhūd al-aṣl* – the judge investigates their character and other relevant aspects pertaining to their testimony in the pending litigation.

1276 Abū Yūsuf and Muḥammad.

1277 The word used is *mashhūd ʻalayhi*, meaning the person against whom testimony is made.

1278 The non-retracting witness is not liable for anything.

1279 That would make two witnesses out of three retracting their testimony together.

1280 The minimum quantum of witnesses is still intact – one man and two women.

1281 A ninth woman.

1282 The remainder of the witnesses are one man and one woman. The two women correspond to one man, so that the right divides in two halves, one for the man and one for the two women. The retracting women are thus together liable for one-quarter.

1283 Abū Yūsuf and Muḥammad.

1284 This is the remainder of the amount less than the customary dowry (*mahr al-mithl*).

1285 This is the reasonable value of the respective item.

1286 That the husband divorced her after consummation of the marriage.

1287 The quality of being *muḥṣan*, i.e. being, or having been, married and having consummated the marriage.

1288 If it is established that one or both of those engaged in unlawful sexual intercourse was married or had been married, and the unlawful sexual intercourse was witnessed by four acceptable witnesses then the sentence is stoning. If the testimony that one or both of those engaged in unlawful sexual intercourse was married or had been married is withdrawn then the sentence becomes flogging.

1289 A *muzakkī* is someone who declares another worthy to be a witness. See below.

1290 *Tazkiyat ash-shuhūd* – verification that the said persons are worthy to be witnesses.

1291 If the person retracts his testimony, after declaring a witness to be honest and acceptable to testify in the court, he is held liable for the relevant actions and its consequences.

1292 A and B, two witnesses, testify that Z swore an oath that his wife Y would be divorced if she did a particular act. C and D, two other witnesses, testify that Y did do that particular act. Consequently, Y is divorced. later, all the witnesses, A, B, C, and D retract their respective testimonies. Only A and B have any liability.

1293 They are: sanity, being adult, freedom, being Muslim, being honest and just (*'adālah*), and not being deaf, mute, blind or convicted of making unsubstantiated allegations of illegal sexual intercourse (*qadhf*).

1294 The *mujtahid* exerts his intellect according to the *uṣūl* (principles) of his *madhhab* in order to reach a judgement. Ed.

1295 If someone fears that he, for any reason, is not able to bear the burden of being appointed a judge or fulfil its duties adequately, and fears that he may do an injustice, it is disapproved for him to accept this post.

1296 ...of someone else that he has infringed.

1297 ...with reasonable punishment.

1298 "Because, by being removed from office, he rejoined all the other people and the testimony of an individual is unacceptable particularly if it pertains to his own actions" (*Al-Jawharat an-Nayrah*).

1299 Regarding deposits or endowments in the possession of someone.

1300 The open session is public and there is no restriction on attendance.

1301 When the invitation is specifically for him, or private, the judge should avoid it, otherwise his impartiality could come into doubt in the eyes of the public.

1302 Their seats must be the same, of a similar quality and position.

1303 The judge must pay equal attention to both parties and not differentiate between them in any way whatsoever.

1304 All debts, the payments of which are due, are to be discharged forthwith.

1305 The debtor is obliged to settle debts he has incurred, whether actual or

through contracts such as agreement to pay a dowry or to stand surety for someone else. He is detained in lieu of property which he has, such as payment made to him for goods he sold or loans that are repaid.

1306 This refers to fact that he has nothing to pay off his debt with.

1307 And it seems that he was truthful in his claim of being poor and/or insolvent.

1308 The judge releases him.

1309 The creditors reserve their right to pursue him and to claim their dues from him, and the judge does not interfere in their issues with the debtor.

1310 The husband is required to provide maintenance for his wife and children. If he refuses to do so, he may be imprisoned.

1311 When one judge writes a legal document to another judge regarding rights of people, it may be accepted as long as witnesses testify to its authenticity.

1312 In this case, the litigant is the defendant.

1313 This may occur when the litigants agree to execute the decision of the judge at another location which is out of the jurisdiction of this particular judge but within the jurisdiction of another judge.

1314 This is similar to the previous case but when one of the defendants is absent and may have already left for that other location. The judge, in this case, only writes the testimony and evidence which was presented before him, but leaves the verdict to be issued by the other judge.

1315 This is made by the judge stamping his official seal over the contents of the document in order to authenticate its author and origin, and to legalise its official status.

1316 The defendant.

1317 This is the verdict of the deciding judge.

1318 The verdict of an authority is executable only if it is based on qualified evidence and it does not oppose the sources of Islamic law.

1319 An absentee may appoint a representative to attend the session when the judge is to issue his verdict.

1320 Free, male, sane, major, Muslim, *‘ādil* (someone with moral probity), not blind, deaf or mute, nor convicted of unsubstantiated accusations of illegal sexual intercourse (*qadhf*).

1321 The decision of the arbitrator is final and it binds both parties who appoint him and who agreed to his decisions.

1322 The *‘āqilah* are not a party to the arbitration, therefore, the judgement of the arbitrator is not binding on them.

1323 This pertains to the division of inherited property. A great deal of inheritance does not necessarily divide up in a simple fashion and it takes great knowledge and skill to divide it to the satisfaction of the heirs.

1324 The wages of the appointed distributor are paid from the *bayt al-māl*.

1325 If the leader is unable to pay an appointed distributor from the *bayt al-māl*, he should appoint one who is paid by the people when he gives them their respective shares.

1326 He must not force the people to accept one particular distributor; the number of distributors may be more than one.

1327 The distributors distribute their respective individual allotments to the heirs. They do not share any individual or indivisible allotment but are given separate areas and shares of allotment so as to avoid confusion and unnecessary contention.

1328 The distributors receive their fees from the heirs according to the number of those heirs.

1329 Abū Yūsuf and Muḥammad.

1330 As against note 1328, the distributors shall receive their fees according to the sizes of the shares they distribute. The bigger the share of the partition one receives, the more he shall pay to the distributor.

1331 This includes all immovable property.

1332 The claimants must prove the death of he from whom they inherit as well as the number of those inheriting from him.

1333 Abū Yūsuf and Muḥammad.

1334 Contrary to note 1332, the heirs need not prove the death or the number of heirs, and their collective confession is sufficient.

1335 If the property is such that after distribution, each of the partakers may derive benefit from his own allotted share, the judge should divide and distribute that property, even if only one of the partakers demands its division.

1336 When all of the goods are cloth, for example, and unlike contrasting

genera, such as rice, goats, etc.

1337 This is due to the vast contrast between each slave in terms of physical, mental, temperamental, psychological characteristics, etc.

1338 A part of real estate, like one room of a house or a portion of a larger piece of land.

1339 If there are ten buildings in one city, irrespective of whether they are together or scattered around the city, and there are seven co-owners, the buildings are divided individually between all of the co-owners. For example, if building A is divided between seven, then building B will be partitioned between seven, etc.

1340 Abū Yūsuf and Muḥammad.

1341 Contrary to the verdict of Abū Ḥanīfah, may Allah have mercy on him, Abū Yūsuf and Muḥammad, may Allah have mercy on them, see the more mutually beneficial method to be acceptable in this regard. They accepted the division of all the buildings together between all the parties, as in, building A goes to heir No. 1 completely, building B goes to heir No. 2, a bigger building may be partitioned in order to accommodate another co-owner and smaller buildings may entitle their holders to share another building also.

1342 The balance must express the division equally according to the respective shares.

1343 The measurement depends on the nature of the property to be divided, for example landed property is measured in cubits, and valued according to its location.

1344 The drains and paths which are imperative portions of the share are attached to their respective shares but separated from all other shares so that no link remains with the other shares whatsoever.

1345 This is the division of real estate, as stated above. Dinars and dirhams are divided separately.

1346 All parties must consent if they wish to include dinars and dirhams in the preceding issue. The building of A, for example, may be smaller as a share than those of the others, and hence they may want to offer him some dirhams or dinars in order to top up his share. In the absence of the mutual consent of the parties thereto, the distributor divides the real estate in such a way that the small share of A is compensated with some land of the real estate in order to balance all of the shares. Dinars and dirhams may not be

used unless all the parties concerned agree to it.

1347 This may include a drain from a building or from land.

1348 The parties had not agreed to make it a part of the partition but to set it aside.

1349 When the lower storey is in shares and it is the portion in question, and the upper storey is owned outright by an individual.

1350 In contrast to the previous note, when it is the upper storey in question, to be shared between two or more, and the lower storey is not in dispute between them.

1351 When both the upper and the lower storeys are disputed with regards to their division.

1352 About any point in the division.

1353 In favour of any point in the division.

1354 That he himself has received his own share.

1355 Against whom he has made the claim.

1356 He means that coercion has taken place, not that it is legally valid. Ed.

1357 Coercion is said to have taken place when A threatens B in order to get him to perform such-and-such an act, and B out of fear of that threat from A performs the act. It is immaterial by whom the threat is made.

1358 When the coercing individual or group threatens to kill the coerced individual, severely beat him, imprison him or cause him, or his interests, any form of harm whatsoever which may compel him to follow their directives.

1359 His property.

1360 Or admits the thousand dirhams, or leases his house, or performs any act or omission against his own will.

1361 Although this example refers to buying and selling under duress, all other matters are dealt with in a similar manner.

1362 Money or goods in exchange for the sold goods.

1363 This constitutes a vitiated sale (*bay‘ fāsid*).

1364 In this case, the coerced person shall not claim from the one who was uncompelled.

1365 Abū Yūsuf and Muḥammad.

1366 When someone is compelled into saying something which removes him from the fold of Islam, it is not considered a valid expression of

apostasy. He remains a Muslim and his wife remains legally married to him.

1367 Though there are thirteen different types of *jihād* (as reported in *Ṣahīh Muslim*), this book deals with military campaigns which are undertaken in order to root out imminent threats and repel armed attacks against the Muslim community.

1368 The term *farḍ kifāyah* means a collective or communal obligation.

1369 As is obvious, this comes with its conditions, rules and regulations, for example, to repel imminent danger and threat of invasion such as when the enemy is ready to overrun and annihilate the land, etc.

1370 The rights and duties of Muslims and *jizyah*-paying non-Muslims living under Muslim governance (*dhimmīs*) are the same.

1371 To accept the invitation of Islam, or to pay *jizyah* and come to a truce on other terms.

1372 Firing with catapults and shooting arrows at the enemy is today replaced with modern means of onslaught, which includes firing shells, laser-guided missiles, electronic means of attack and even computer hacking – such as computer viruses, worms, trojans, etc., media warfare, and financial un-plugging, etc.

1373 Flood their forts if possible.

1374 The legal classification *farḍ kifāyah* becomes *farḍ ‘ayn* when the enemy invades the lands of the Muslims, and in such circumstances, the wife does not require permission from her husband to fight nor the slave from his master.

1375 The warriors can take nothing from the spoils except that which the leader of the expedition gives them according to the division of the spoils in the *sharī‘ah*. Ed.

1376 Those people upon whom the war strategies of the enemy depend and the opinions of those whom are sought with regards to warfare are not to be spared because of their danger to the Muslims.

1377 The Imam should inform the enemy of the dissolution of the peace treaty.

1378 The Imam is not required to inform the enemy of the breach of the truce in this case.

1379 None of these is a part of the spoils.

1380 *Fay'* is that booty taken without fighting which all goes to the Imam to do with as he sees fit.

1381 Ransoms may not be paid for Muslim prisoners-of-war in the hands of the enemy in exchange for enemy prisoners-of-war.

1382 Abū Yūsuf and Muḥammad.

1383 In ownership and possession.

1384 A part of the spoils of war.

1385 With regards to the booty, the one fighting in the battle and the one who helps in the battle receive equal shares.

1386 If reinforcements reach the Muslim army before the latter has taken the booty back to the Muslim lands, the former receive a share in that booty.

1387 Those who went with the army for the sake of trading within the army have no right to the spoils because they did not go out with the army to fight the enemy but only to trade.

1388 The authorisation of the master for him to do that is immaterial.

1389 The words 'Turks' and 'Romans' are hypothetical; any two groups that fight each other are referred to.

1390 Original Muslim property taken by the non-Muslims in battle and then re-taken by Muslim warriors.

1391 If the goods of a Muslim, A, were taken by the enemy in battle, the enemy becomes the owner of those goods, but if the Muslims defeat the enemy and retake their own goods, then A may acquire ownership of his own goods before division of the booty is made, and he will not be required to pay for them.

1392 In contrast with the previous case, if the Muslim, A, wishes to seek ownership of the goods, he must buy them back from the fighter who was given them in the distribution of the spoils.

1393 Although they may gain them, they never gain full ownership. Thus, if Muslims regain them in battle, they revert to their original owners.

1394 Abū Yūsuf and Muḥammad.

1395 Before distribution of the spoils.

1396 i.e. his heirs will not get anything. Ed.

1397 These are the belongings of the killed enemy fighter, that are used in battle.

1398 The leader takes a fifth. Ed.

1399 The belongings of the fallen enemy fighter form a part of the whole booty and they are distributed likewise.

1400 Abū Yūsuf and Muḥammad.

1401 With regards to the shares of the conquering fighters, the old or inferior horse is considered the same as the superior breed.

1402 The close relatives in this context refers to those closely related to the Prophet Muḥammad ﷺ. So, if orphans, the needy and the travellers are close relatives of the Prophet Muḥammad ﷺ, they are given gifts from the fifth before other orphans, needy people and travellers.

1403 There is no actual share for Allah in the booty; it is figurative.

1404 *Ṣafī* is whatever the Prophet ﷺ would choose for himself from the booty.

1405 i.e. he does own it but it is prohibited (*maḥẓūr*) to him.

1406 i.e. at risk of expropriation or being spent otherwise.

1407 Land subject to *'ushr* is tithable, but dissimilarities lie between this understanding of tithe and that of other religions and cultures, such as Judaism, Christianity, Sikhism, those applied during the Middle Ages, and those of modern practices such as governmental collections in different countries.

1408 A place near Kufa in Iraq.

1409 Today's Iraq.

1410 A town to the east of the River Tigris in Iraq.

1411 A place near Basra in Iraq.

1412 This was the geographical extent of the Arab lands and those lands to which the land-tax (*kharāj*) and *'ushr* (a tenth) taxation laws applied at the time of the writing of this book, the *Mukhtaṣar* by Imam Abu'l-Ḥusayn Aḥmad ibn Muḥammad al-Qudūrī, may Allah have mercy on him.

1413 *'Ushr*, i.e. a tenth of the produce, is payable by the Muslim owners of such land as zakāh.

1414 ...if they are not Muslim.

1415 A river in Iran.

1416 The *jarīb* is sixty cubits by sixty cubits.

1417 This is for the land of the Sawād, as it was then owned by non-

Muslims, and so subject to *kharāj*.

1418 One *ṣā'* is eight *riṭls* in the school of Abū Ḥanīfah, may Allah be merciful to him.

1419 This is made between the conquering Muslim army and the non-Muslim owners of the conquered land.

1420 This is the upper class of the society.

1421 This is the middle class.

1422 This is the working class.

1423 According to Abū Ḥanīfah, may Allah have mercy on him, if one has not paid *jizyah* for two years or more, then all previous *jizyah* due lapse from him and he is only required to pay *jizyah* for the current year. Abū Yūsuf and Muḥammad, may Allah have mercy on them, hold the contrary view making all previous unpaid dues payable.

1424 The *jizyah* is taken from him by force, if necessary, and the appropriate *ḥadd* punishments for the above crimes applied to him. Ed.

1425 This is after Islam is offered to him and any doubts that he has therein are removed.

1426 It shall remain out of his ownership as long as he persists in reneging.

1427 If the renegade returns to Islam and becomes Muslim again, he is reinstated as the owner of his property.

1428 It is placed in the treasury (*bayt al-māl*).

1429 They are repaid forthwith from his property.

1430 All trade made during that period remains suspended for the duration of his reneging.

1431 The ownership of her property does not cease by her becoming a renegade.

1432 A tribe of the Iraq region composed mainly of Christians.

1433 The Banū Taghlib refused to pay *jizyah* and asked instead to pay *zakāh* like the Muslims. The Caliph 'Umar ﷺ accepted their demand and a mutually agreed amount, double the *zakāh*, was levied upon them in lieu of *jizyah*.

1434 Because *zakāh* is taken from Muslim women as well as men, the women of Banū Taghlib were also required to pay it.

1435 Small groups or individuals may rebel against the leader due to doubts or misunderstandings and it remains incumbent on the leader to rid them of

such doubts or misunderstandings.

1436 Although they are rebels, they are still Muslims.

1437 It may be that the loyal Muslims require weaponry due to the lack of it, so whatever weapons they acquire from the rebels, they may use them in any battle. Nevertheless, after the fighting, and the consequent surrender and repentance of the former rebels, the weapons must be returned to them, since they are Muslims and the weapons are their property.

1438 If the rebels had not spent the proceeds of the land-tax (*kharāj*) and the tenth (*'ushr*) rightfully, e.g. they spent it to purchase arms to fuel their rebellion, etc., then those who paid that are not compelled to pay it again. It would, however, be better for them that they do pay it again, for the sake of Allah, exalted is He, and this time to the bona fide representatives of the Muslim leader.

1439 Abū Yūsuf and Muḥammad.

1440 This includes anything used to recline on or rest upon.

1441 Abū Yūsuf and Muḥammad.

1442 *Khazz* is a mix of fibres which include silk. Ed.

1443 This was written when the Arabic language was very strong among the Muslims. It is now better, and not disapproved, to use such marks and diacritical indications for ease of recitation, especially for the benefit of non-Arab Muslims.

1444 This is permitted but better avoided.

1445 This refers to animal sexual intercourse, and in this case it is crossbreeding.

1446 The offspring of a male donkey (jack) and a female horse (mare) is a mule, whereas the offspring of a male horse (stallion) and a female donkey (jenny) is a hinny.

1447 These are transactions between humans, such as contracts, agency, surety, trade, etc.

1448 This is only when we are inclined to believe their statement to be true.

1449 These are the affairs between Allah, exalted is He, and humans, such as prayer, oaths, fasting, etc.

1450 This is the same as the preceding issue.

1451 These are those with whom marriage is permanently forbidden,

irrespective of their relationship by blood, milk or affinity.

1452 This permits the viewing of the permitted parts of any unmarried woman, which is her face and her palms.

1453 The sale of fruit juice is itself lawful.

1454 It is not permitted for the testator to bequeath anything in favour of someone who is already inheriting from him, unless all the other heirs to the inheritance of this testator, after his death, agree to it and allow such a bequest to go ahead.

1455 The maximum amount that one may bequeath is a third of the property.

1456 If someone had made a bequest to another person who was later responsible for his death, whether accidently or not, that bequest would not be carried out. Ed.

1457 The general rule requires the legatee to accept the legacy after the death of the testator. This proviso describes the situation when the legatee dies before his acceptance of the bequest. Due to the nature of the case, the bequest is made a part of the property of the deceased, by way of juristic preference (*istiḥsān*), and his heirs inherit it.

1458 The associated person appointed by the judge assists the one bequeathed to in the implementation of the bequest.

1459 In matters other than these, neither of the two legatees may transact with the shared bequest without the consent of the other.

1460 The maximum amount which may be bequeathed is a third, otherwise the unanimous approval of the heirs is to be sought. In this case, in total, two-thirds of the property have been bequeathed to two persons. Lacking approval from the heirs, the maximum of a third is divided equally between the two legatees, which makes the maximum amount to each legatee a sixth of the total property of the deceased.

1461 The sixth is returned to the inheritance. The third is divided into three: two-thirds for the legatee who has been bequeathed a third, and a third for the legatee who has been bequeathed a sixth.

1462 Out of the four portions, three is for the one to whom the entire property was bequeathed, and one portion is for the legatee to whom a third of the property was bequeathed.

1463 *Muḥābāh*: when A, the testator, bequeaths that an item worth nine hundred dirhams be sold to legatee, B, for three hundred dirhams, then B has

acquired the benefit of six hundred dirhams (two-thirds bequeathed), as *muḥābāh*. This issue of *muḥābāh* is valid subject to the total bequest being within a third of the property of the testator. In this case, the sum total of the bequest by way of *muḥābāh* is six hundred dirhams. If the testator has other property totalling a value of twice that of the bequest (i.e. two-thirds of the total property), which in this case would be a minimum of twelve hundred dirhams, then such a bequest would be valid; B having acquired the benefit of receiving two-thirds of the item as bequest via *muḥābāh*, though that amounts to less than one-third of the total property of the testator.

If the total comprises more than a third of the property of the testator, i.e. he has no other property, and the heirs do not approve of the bequest, then they should leave out a third value for that item, which is three hundred dirhams, and receive the value of the remainder, in which case B, the legatee, pays six hundred dirhams.

1464 *Si'āyah*: when A, the testator bequeaths the freeing of his two slaves, B and C, who are worth nine hundred dirhams and 2700 dirhams, respectively, and A has no other property, but the heirs do not approve of the bequest due to it being more than a third, the slaves are freed to the extent of a third of their individual values, together making up a third of their associated value of a third, i.e. B is freed according to three hundred dirhams of his worth and C according to nine hundred dirhams of his worth. With regards to the remainder of their values, they have to pay that off, six hundred dirhams and eighteen hundred dirhams respectively.

1465 *Darāhim mursalah*: when A, the testator bequeaths three hundred dirhams to B and six hundred dirhams to C but his total property is only nine hundred dirhams, if the heirs do not agree to that, then a total of a third of the entire wealth of the testator is distributed amongst the people to whom he has made a bequest. In this case, out of nine hundred dirhams, a third of the total property of the testator, which is three hundred dirhams, is shared between the legatees, one hundred dirhams and two hundred dirhams for B and C, respectively.

1466 The payment of the debt is a priority over that of the bequest.

1467 That is the terminal illness which confines him to his bed and leads to his death.

1468 When he is on his deathbed he no longer has free disposal of his

property apart from the third from which he can make a bequest. His dying actions are of the same status as bequests. Ed.

1469 All people who receive bequests (legatees) may partake in this and they are not entitled to anything else.

1470 Abū Yūsuf and Muḥammad.

1471 Abū Yūsuf and Muḥammad.

1472 If either of the two leave behind enough property to constitute a legal bequest, their bequest is nevertheless invalid due to their legal incapacity.

1473 Such as the husbands of his daughters, his sisters and any other un-marriageable female relatives, even his mother and grandmother. Ed.

1474 If the testator bequeaths some property and states that such-and-such a portion should go to his relatives, that bequest includes two persons or more from amongst his un-marriageable relatives, and it does not include his parents or his children because they receive fixed shares (*farā'iḍ*) and thus may not receive bequests from him. Ed.

1475 Abū Yūsuf and Muḥammad.

1476 The slave-woman and her child.

1477 *Li'dh-dhakari mithlu ḥaẓẓi'l-unthayayn* (Sūrat an-Nisā' 4:11).

1478 A sixth.

1479 Howsoever low, great-grandson, etc.

1480 Howsoever high, great-grandfather, etc.

1481 The homicide cannot inherit from the person whom he has killed, whether accidentally or deliberately.

1482 A Muslim cannot inherit from a non-Muslim nor can a non-Muslim inherit from a Muslim. However, non-Muslims may inherit from each other even if they are of different religions. Ed

1483 The Qur'ān.

1484 A full sister and a full brother are also known as sister-german and brother-german respectively, although the usage is archaic.

1485 If the deceased wife leaves a child.

1486 When the child, or grandchild, exists.

1487 Two daughters or more, will together be given two-thirds to be shared between them. The same applies to two granddaughters or more from the son when no proper daughter exists, two full sisters or more, and two or more

half-sisters from the father in the absence of a full sister.

1488 The residue of the estate, after the legally appointed persons have been given their shares, is her fixed share in two cases.

1489 This applies when there are no heirs other than the spouse and both parents of the deceased.

1490 After the husband or the wife, as the case may be, is allotted his or her fixed share, the mother is given a third of whatever remains.

1491 Uterine brothers and sisters, if they are two or more, jointly inherit a third of the inheritance.

1492 If the deceased leaves a child or grandchild [from a son].

1493 This includes sisters, full, agnatic and uterine, when they are two or more, in any combination.

1494 Along with a child or a grandchild from the son of the deceased.

1495 The grandmother may be from either side, maternal or paternal.

1496 Both paternal and maternal grandfathers are included.

1497 He renders them residuaries (*'aṣabah*) in terms of inheritance, i.e. the *'aṣabah* are those who inherit when there are no direct heirs or they inherit the residue of the estate when the fixed shares are distributed.

1498 Paternal uncles of the father.

1499 Full brothers are stronger in relation and in ties than half-brothers from either the father or the mother.

1500 This is known as *muqāsamah*.

1501 *Li'dh-dhakari mithlu ḥaẓẓi'l-unthayayn* (Sūrat an-Nisā' 4:11).

1502 The males shall inherit but not the females.

1503 The males have twice the share of the females at that level, i.e. in relation to their sisters.

1504 The paternal uncle at some point was married to the mother of the deceased, so that his son is both a cousin and a uterine brother to the deceased.

1505 Including the Jews and the Christians.

1506 These two cases are hypothetical; this applies to any case wherein multiple deaths have occurred simultaneously of those who would have inherited from one another, and the sequence of their deaths cannot be ascertained.

1507 Otherwise, some of them would have inherited from others, and then that would have gone, in turn, to their heirs.

1508 This is like a Magian father marrying his own daughter. Here we find a clash of relationship which is that of daughter and wife. If he died, she would inherit from him in two ways; as a wife and as a daughter. Islam has forbidden such incestuous relationships and, hence, inheritance applying thereto.

1509 The process of imprecation by both parties (*li'ān*) (See Chapter of *Li'ān* – Imprecation by Both Parties).

1510 The distribution of the inheritance remains suspended.

1511 *Waḍ' al-ḥamal* in this regard refers to being relieved of the pregnancy, whether delivering the child alive, stillborn, suffering a miscarriage or having an abortion.

1512 She is the great-grandmother of the deceased.

1513 This is a comparative clause where the closer distant kindred are more deserving to inherit than those who are relatively further.

1514 After the heirs who have fixed shares have been given their shares and an amount is left over, in the absence of residual heirs, the master who freed the slave inherits that amount.

1515 With regards to the contract of clientage, for example when a man takes on the clientage of another person who accepts Islam, the master has a right in the inheritance left by the client (*mawlā*).

1516 Abū Ḥanīfah and Muḥammad, may Allah have mercy on them.

1517 If the largest share of the inheritance is a half, then the largest common denominator is two, hence, the shares are divided from two.

1518 As in the previous note, the largest common denominator forms the basis of distribution, which in this case is three.

1519 Contrary to the first case, the inheritance is divided in fours here.

1520 This refers to the doctrine of *'awl*, where in the case in which shares such as those aforementioned cannot be determined due to the number of shares exceeding the total inheritance, such denominators may be increased in order to accommodate all the heirs in fairness. For instance, if a woman dies leaving behind her a husband and two sisters, the husband would take a half of the property and the sisters would take two-thirds. This would leave

us with an impossible scenario if we were to divide the property in twos or threes. If the husband was to be given a half, the sisters would only be left with a quarter each, and if we were to give the sisters two-thirds, the husband would only receive a third. In a case such as this, we raise the number of shares to seven, where the husband takes three shares and the sisters take two shares each, seven in total between them. Likewise one deals with shares rising to eight, nine and ten.

A similar case was first dealt with during the time of the Caliph ‘Umar ibn al-Khaṭṭāb ﷺ and the decision reached on it is the basis for this subject.

1521 In this case, the basis is four because the wife gets a quarter.

1522 The wife receives two-eighths and the brothers share six-eighths between them.

1523 The three shares cannot be given to six brothers properly unless we find the highest common factor between them, which is two. We multiply three by two and achieve six, which now distribute equally between the six brothers.

1524 In this issue, the common denominator is four, the wives share a quarter and the two brothers are entitled to the remainder of three-quarters which do not divide equally between them. We multiply the denominator, which is four, with two to achieve eight. We can now give two shares, one each, to the wives and six, three each, to the brothers.

1525 When you have multiplied using the bigger number, which is four, then you do not need to multiply using the smaller number, two.

1526 Six multiplied by two or three multiplied by four, both of which give twelve.

1527 The inheritance is divided into forty-eight shares, which are easily divisible among the heirs without any awkward fractions. Ed.

1528 This forms the basis of the issue, the denominator.

1529 The basis of the case, for example, is four: the four wives have a quarter, the sister a half, and the paternal uncles a share which is divided among them, and they are six in number. So multiply half the number of wives by the number of uncles, i.e. two times six, and that gives twelve, and then multiply it by the obligatory shares, which are four (because the inheritance is originally divided into quarters) and you get forty-eight shares, of which the wives get a quarter or twelve shares, three shares each, the sister

gets twenty-four shares, and the uncles get twelve shares, two shares each. This case is taken from *al-Jawharat an-Nayrah* in explanation of this paragraph. Ed.

1530 The issue is worked out according to the aforementioned relevant examples.

1531 Such as a wife, a sister by the father, a mother and four paternal uncles. Moreover the inheritance was not divided before one of the uncles dies without any heirs apart from his siblings. The first case is based on four, the wife taking a share, the sister two shares, the uncles a share divided between them. So multiply the four [shares] by four [uncles] and you will get sixteen, the wife taking four, the sister eight, and the uncles four, each one taking one share. One of them [the uncles] dies leaving behind him his three siblings, and in his hand there is the one share which is not divisible among his heirs [without using fractions]. So multiply the case, which is three [because of the number of his siblings] by the sixteen [shares which have not been shared out among the heirs of the first deceased] and it will be forty-eight, of which the correct result is that the wife gets four multiplied by three which will be twelve, that being a quarter of the entire [inheritance of the first deceased], the sister gets eight multiplied by three which is twenty-four, and that is a half [of the original inheritance] and there remain twelve for the remaining heirs [the uncles] each one receiving four. (*Al-Jawharat an-Nayrah*). Ed.

1532 An example of this is a husband [who gets a half of his wife's estate] and two brothers [who share a half of their sister's estate], which correctly is from [a basis of] four, and then the husband dies and leaves four sons [from another wife]. Its basis is four and the two [cases] agree on [being divisible] by a half. So multiply a half of their [the sons'] number [i.e. a half of four is two] by all of the other [four shares from the first case] and it will be eight [shares]. From this the two cases will be correct: the two brothers get four [two shares each] and the children of the husband get four shares, [one share each]. (*Al-Jawharat an-Nayrah*). Ed.

1533 There are forty-eight grains in a dirham.

1534 Its form is: a husband [who takes a quarter of his deceased wife's estate], two parents [each of whom takes a sixth] and a son [the case being] from twelve [shares] and then the son dies leaving a son, a father, and a grandmother and grandfather, they [the father, grandfather and grandmother]

being the ones left by the first deceased, and he has in his possession five of the twelve [shares left by his mother] and the basis of his fixed share is from six, so multiply the second [six] by the first [twelve] and it will be seventy-two, of which the father [of the deceased woman] takes in the first [case] twelve [shares] but he gets nothing in the second case because he is the father of a [deceased] mother, and the mother gets seventeen, the husband in the two cases, and he is the father in the second twenty-three [shares] and the son in the second [case gets] twenty [shares].

So divide the [seventy-two] shares of the case by the grains of the dirham, which are forty-eight, so that half a share comes out as thirty-six, that corresponding to half a dirham which is twenty-four [grains], and a third of a share is twenty-four corresponding to a third of a dirham which is sixteen [grains], every share being two-thirds of a grain, and for three shares there are two grains, and the quarter [share] is eighteen [grains]. The *dāniq* is ten, the eighth nine, the *qīrāṭ* six shares, and the *ṭassūj* – which is half a *qīrāṭ* – and it is two grains or three shares, and the grain is a share and a half, and every share has two-thirds of a grain (*Al-Jawharat an-Nayrah*). Ed.